Information gathered from the internet about

Edwin Granville Bates

Inventor of several Numbering Machines

That are at the base of the following companies:

Bates Manufacturing Company
Bates Machine Company
Bates Numbering Machine Company
Roberts Numbering Machine Company

Last update March 24 2021 - Bosj

Titlepage.png

NEXT ITEM

follow from this fact alone that the public have come to understand that the nails having these checks are made and sold by the complainant. Where a pattern like this check pattern appears on an article like a nail, which is generally, if not universally sold in cartons or boxes, and where the pattern may have been intended as a mere ornament, or may be a mere incident in the process of manufacture, some direct evidence is plainly necessary to establish a trade-mark in this pattern by association. In my opinion, upon the state of facts presented in this record, a trade-mark by association cannot be inferred from mere use, but such use should be supplemented by other clear and convincing proof.

Regarding the case in another possible aspect, as one of unfair competition, we find there is no proof of fraudulent intent on the part of the defendant in using this check pattern, nor is there any satisfactory evidence that purchasers of nails in the ordinary course of trade have been, or are likely to be deceived by reason of the defendant's use of this pattern. It appears that the defendant did not adopt this check mark for the purpose of palming off its goods as those of the complainant, but that its use arose as an incident in the process of manufacture due to the knurling or roughening of one of the heading dies in order to secure better results in the machines it employs. It further appears that the cartons and boxes of the defendant, in which its nails are put up and sold to the trade, bear no resemblance to those of the complainant. To be sure, there is some evidence introduced by the complainant that nails are sold in bulk from boxes, and that in such cases a dishonest retail dealer might deceive purchasers by putting Putnam nails into Capewell boxes, and then weighing them out and selling them for Capewell nails. One witness alone testifies to such a practice on the part of a retail dealer, but in this particular instance the attempt at deception was unsuccessful, for this blasksmith knew a Capewell nail from a Putnam nail, nothwithstanding the check mark on the head of the latter. The question in this case, however, is not what a dishonest dealer might accomplish by a trick, but whether the defendant has so dressed its goods as to deceive the ordinary purchaser in the usual course of business; and, it is submitted that the complainant's proofs fall far short of establishing this proposition.

The complainant has failed to make out a case of a technical trade-mark or of unfair competition. This conclusion renders the consideration of the other defenses unnecessary.

A decree may be entered dismissing the bill.

* * *

BATES MFG. CO. v. BATES MACH. CO.

Circuit Court, D. New Jersey. October 24, 1905.

Reported in 141 Fed. Rep. 213.

1. Trade-Marks—Unfair Competition—Use of Name.

In the absence of contract, fraud, or facts raising an estoppel, the fact that a person assists in forming a corporation in the name of which his own name is used does not preclude the use of his name as a part of that of another corporation in which he subsequently becomes interested, although it is organized to engage in competing business.

2. Same—Imitation of Packages—Injunction.

A manufacturer will be enjoined from so dresing his goods for the market that they are likely to be mistaken by purchasers for the goods of a competitor earlier in the business.

In Equity. On motion for preliminary injunction.

See 123 Fed. 408.

Frank L. Dyer, Delos Holden and Melville Church, for complainant.

Alfred B. Carhart, for defendant.

LANNING, District Judge.

The complainant seeks a preliminary injunction restraining the defendant: First, from using the name of "Bates" in connection with the sale of automatic hand-numbering machines; and, second, from imitating the labels on the boxes in which the complainant's machines are packed and placed upon the market. The proofs show that in 1890 Edwin G. Bates and Samuel Insull caused the complainant company to be organized

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under the laws of the state of New York, for the manufacture and sale of numbering machines under the patents, inventions, and processes theretofore secured by Bates. Bates thereupon assigned his patents to the corporation, taking a part of its capital stock in consideration therefor. The company started its business with Bates as its general manager. For reasons hinted at in the proofs, but not clearly shown, Bates in 1899 sold out his stock and withdrew from the corporation. He thereupon began the manufacture and sale of numbering machines on his own account, and seems to have slowly built up a business until some time in 1899, when he caused the defendant company to be organized under the laws of New Jersey. It appears that the defendant company in 1904 put upon the market a new hand-numbering machine known as "Model No. 49." This machine came into direct competition with certain of the machines of the complainant. The complainant now contends that the defendant has no right to use the name "Bates" in connection in the sale of automatic hand-numbering machines. This conteniton is founded on the assertion that Edwin G. Bates, when he became a party to the organization of the complainant company in 1890, asigned tothe corporation the sole and exclusive right to the use of his name in the manufacture and sale of hand-numbering machines. But in the proofs submitted by the defendant company this assertion is denied. A written agreement executed by Edwin G. Bates and Samuel Insull on September 13, 1890, is in evidence, but there is nothing in it to support the contention. If Bates transferred to the complainant company the exclusive right to use his name in the business above referred to, it must have been by some method not clearly disclosed in the proofs.

In Howe Scale Co. v. Wyckoff, Seamans, etc., 198 U. S., at page 140, 25 Sup. Ct. 614, 49 L. Ed. 972, it was said:

"We hold that, in the absence of contract, fraud, or estoppel, any man may use his own name in all legitimate ways, and as the whole or a part of a corporate name."

In that case the Circuit Court for the District of Vermont enjoined the defendant company from the use of the word "Remington," or the term "Rem-Sho," as the name or a part of the name of any typewriting machine whatever manufactured by the Remington-Sholes Company. The Circuit Court of Appeals of the Second Circuit considered the injunction too broad, and limited it by enjoining the defendant from the use of the name "Remington." The Supreme Court reversed even this modified decree and directed the bill to be dismissed, and in the course of the argument Chief Justice Fuller, after reviewing the authorities, said:

"Doubtless the Remingtons and Sholes, in using the name 'Remington-Sholes,' desired to avail themselves of the general family reputation attached to the two names, but that does not in itself justify the assumption that their purpose was to confuse their machines with complainant's; or that the use of that name was in itself calculated to deceive. Remington and Sholes were interested in the old company, and Remington continued as general manager of the new company. Neither of them was paid for the use of his name, and neither of them had parted with the right to that use. Having the right to that use, courts will not interfere where the only confusion, if any, results from a similarity of the names and not from the manner of the use. The essence of the wrong in unfair competition consists in the sale of the goods of one manufacturer or vendor for those of another, and, if defendant so conducts his business as not to palm off its goods as those of complainant, the action fails."

As the case now before me stands, there can be no preliminary injunction restraining the defendant company from using the word "Bates" in connection with the manufacture and sale of hand-numbering machines. Whether the complainant is entitled to relief by injunction must be determined only upon full proofs on final hearing.

But the complainant is clearly entitled to the relief sought on the second ground mentioned in its prayer for relief, namely, that the defendant be enjoined from imitating the labels on the complainant's boxes. The complainant's hand-numbering machines have long been put up in small rectangular boxes, upon the outer surfaces of which are pasted labels setting

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forth matters supposed to be of interest to the purchasers of the machines. On one end of each of these boxes is a label with the title "A Few Don'ts." The first two words "A few are in small capital letters; the last word "Don'ts" is in large capital letters. Under this title are seven sentences, each of which commences with the word "Don't" in heavy type. The first sentence is: "Don't use rubber stamp ink upon pad of this machine." The defendant's machines are likewise packed in small rectangular boxes upon the outer surfaces of which are pasted labels containing matters supposed to be of value to purchasers. On one end of each of the defendant's boxes is a label, at the top of which is the title "A Few Dont's." The words "A few" are in small capital letters, andthe word 'Don'ts" is in large capital letters. Under the title are seven sentences, each commencing with the word "Don't" in heavy type. Four of these seven sentences are literally the same as those used upon the complainant's boxes. The other three are substantially the same. The labels on the complainant's boxes also contain a series of "Useful Hints" concerning the use of the complainant's machine, while on the defendant's boxes is a series of "Important Suggestions" concerning the use of the defendant's machine. The substance of these "Important Suggestions" on the defendant's boxes is the same as that of the "Useful Hints" on the complainant's boxes. Indeed, in many respects the language is the same. Other striking similarities between the labels upon the boxes of the complainant and the defendant might be pointed out. I am satisfied that the defendant should not be permitted to use these labels in marketing its machine known as "Model No. 49." They are calculated to induce the purchasing public to believe that the defendant's machine known as "Model No. 49" is a product of the complainant company.

There will be a preliminary injunction restraining the defendant from using, in connection with the sales of its machine known as "Model No. 49," any label containing a reproduction in whole or in part of the language heretofore used by the complainant company upon its labels. The exact form of the order for injunction will be settled on notice.

VINCENDEAU v. PEOPLE.

(Supreme Court of Illinois. Feb. 21, 1906.)

Reported in 76 N. E. Rep. 675.

1. Trade-Marks and Trade-Names—Goods Bearing False Label—Sale—Bottled Goods..

Under 3 Starr & C. Ann. St. 1896, c. 140, par. 7, providing that whoever sells any goods contained in any case, can, or package to which any counterfeit label is attached shall be fined, and that any one knowingly selling goods having a counterfeit label attached shall be punished, etc., the sale of bottles of wine bearing a counterfeit label is an offense.

2. Same—What Sales Punishable—Necessity of Filing Label.

Under 3 Starr & C. Ann, St. 1896, 140, jars, 7 & 8, punishing the sale of goods bearing counterfeit labels and providing that labels, trade-marks, or other devices may be filed for record by leaving two copies with the Secretary of State and filing a sworn statement specifying the name or names of person, association, or union in whose behalf the label is filed, etc., and that in all suits and prosecutions the certificate of the Secretary of State that the label has been recorded shall be proof of the adoption of label, no prosecution for the use of a counterfeit label can be maintained, except for acts done after the copies of the label have been filed.

3. Same—Criminal Prosecution—Indictment—Sufficiency.

Under 3 Starr & C. Ann, St. 1896, c. 140, punishing the use of counterfeit labels, and providing in paragraph 8 that every person using a label shall file the same for record with the Secretary of State by leaving two copies and filing therewith a certain affidavit, an allegation in an indictment for using a counterfeit label that the labels were "duly filed for record as by law provided" sufficiently alleges that the required affidavit was filed.

4. Same—Allegations as to Sale—Variance.

In a prosecution for violation of 3 Starr & C. Ann. St. 1896, c. 140, pars. 6, 7, by knowingly selling goods bearing a counterfeit label, an allegation in the indictment that the goods were sold to a certain person does not vary

right or not, need not now be discussed.

Bill dismissed, with costs.

* * *

BATES MFG. CO. v. BATES MACH. CO.

Circuit Court, D. New Jersey. October 24, 1905.

Reported in 141 Fed. Rep. 213.

1. Trade-Mark — Unfair Competition — Use of Name.

In the absence of contract, fraud or facts raising an estoppel, the fact that a person assist in forming a corporation in the name of which his own name is used does not preclude the use of his name as a part of that of another corporation in which he subsequently becomes interested, although it is organized to engage in competing business.

2. Same—Imitation of Packages—Injunction.

A manufacturer will be enjoined from so dressing his goods for the market that they are likely to be mistaken by purchasers for the goods of a competitor earlier in the business.

In Equity. On motion for preliminary injunction.

See 123 Fed. 408.

Frank L. Dyer, Delos Holden and Melville Church, for complainant.

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LANNING District Judge.

The complainant seeks a preliminary injunction restraining the defendant. First, from using the name of "Bates" in connection with the sale of automatic hand-numbering machines; and, second, from imitating the labels on the boxes in which the complainant's machines are packed and placed upon the market. The proofs show that in 1890 Edwin G. Bates and Samuel Insull caused the complainant company to be organized under the laws of the state of New York, for the manufacture and sale of numbering machines under the patents, inventions, and precesses theretofore secured by Bates. Bates thereupon assigned his patents to the corporation, taking a part of its capital stock in consideration therefor. The company started its business with Bates as its general manager. For reasons hinted at in the proofs, but not clearly shown, Bates in 1895 sold out his stock and withdrew from the corporation. He thereupon began the manufacture and sale of numbering machines on his own account, and seems to have slowly built up a business until some time in 1899, when he caused the defendant company to be organized under the laws of New Jersey. It appears that the defendant company in 1904, put upon the market a new hand-numbering machine known as "Model No. 49." This machine came into direct competition with certain of the machines of the complainant. The complainant now contends that the defendant has no right to use the name "Bates" in connection with the sale of automatic hand-numbering machines. This contention is founded on the assertion that Edwin G. Bates, when he became a party to the organization of the complainant company in 1890, assigned to the corporation the sole and exclusive right to the use of his name in the manufacture and sale of hand-numbering machines. But in the proofs submitted by the defendant company this assertion is denied. A written agreement executed by Edwin G. Bates and Samuel Insull on September 13, 1890, is in evidence, but there is nothing in it to support the contention. If Bates transferred to the complainant company the exclusive right to use his name in the business above referred to, it must have been by some method not clearly disclosed in the proofs.

In Howe Scale Co. v. Wyckoff, Seamans, etc., 198 U. S., at page 140, 25 Sup. Ct. 614, 49 L. Ed. 972, it was said:

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In that case the Circuit Court for the District of Vermont enjoined the defendant company from the use of the word "Remington," or the term "Rem-Sho," as the name or a part of the name of any typewriting machine whatever manufactured by the Remington-Sholes Company. The Circuit Court of Appeals of the Second Circuit considered the injunction too broad, and limited it by enjoining the defendant from the use of the name "Remington." The Supreme Court reversed even this modified decree and directed the bill to the dismissed, and

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in the course of the argument Chief Justice Fuller, after reviewing the authorities said:

"Doubtless the Remington and Sholes, in using the name Remington-Sholes, desired to avail themselves of the general family reputation attached to the two names, but that does not in itself justify the assumption that their purpose was to confuse their machines with complainant's; or that the use of that name was in itself calculated to deceive. Remington and Sholes were interested in the old company, and Remington continued as general manager of the new company. Neither of them was paid for the use of his name and neither of them had parted with the right to that use. Having the right to that use, courts will not interfere where the only confusion, if any results from a similarity of the names and not from the manner of the use. The essence of the wrong in unfair competition consists in the sale of the goods of one manufacturer or vender for those of another, and, if defendant so conducts his business as not to palm off its goods as those of complainant, the action fails."

As the case now before me stands, there can be no preliminary injunction restraining the defendant company from using the word "Bates" in connection with the manufacture and sale of the complainant is entitled to relief by injunction must be determined only upon full proofs on final hearing.

But the complainant is clearly entitled to the relief sought on the second ground mentioned in its prayer for relief, namely, that the defendant be enjoined from imitating the labels on the complainant's boxes. The complainant's hand-numbering machines have long been put up in small rectangular boxes, upon the outer surfaces of which are pasted labels setting forth matters supposed to be of interest to the purchasers of the machines. On one end of each of these boxes is a label with the title "A Few Don'ts." The first two words "A few are in small capital letters; the last word "Don'ts" is in large capital letters. Under this title are seven sentences, each of which commences with the word "Don't" in heavy type. The first sentence is: "Don't use rubber stamp ink upon pad of this machine. The defendant's machines are likewise packed in small rectangular boxes upon the outer surfaces of which are pasted labels containing matters supposed to be of value to purchasers. On one end of each of the defendant's boxes is a label, at the top of which is the title "A Few "Don'ts." The words "A few" are in small capital letters, and the word "Don'ts" is in large capital letters. Under the title are seven sentences, each commencing with the word "Don't" in heavy type. Four of these seven sentences are literally the same as those used upon the complainant's boxes. The other three are substantially the same. The labels on the complainant's boxes also contain a series of "Useful Hints" concerning the use of the complainant's machine, while on the defendant's boxes is a series of "Important Suggestions" concerning the use of the defendant's machine. The substance of these "Important Suggestions" on the defendant's boxes is the same as that of the "Useful Hints" on the complainant's boxes. Indeed, in many respects the language is the same. Other striking similarities between the labels upon the boxes of the complainant and the defendant might be pointed out. I am satisfied that the defendant should not be permitted to use these labels in marketing its machine known as "Model No. 49." They are calculated to induce the purchasing public to believe that the defendant's machine known as "Model No. 49" is a product of the complainant company.

There will be a preliminary injunction restraining the defendant from using in connection with the sales of its machine known as "Model No. 49," any label containing a reproduction in whole or in part of the language heretofore used by the complainant company upon its labels. The exact form of the order for injunction will be settled on notice.

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NEXT ITEM

The Bates Manufacturing Co.

of Orange, N. J.

Manufacturers of the ORIGINAL and ONLY Bates Automatic Hand Numbering Machine

obtain an injunction against The Bates Numbering Machine Company of Brooklyn for unfair and misleading competition.

Dealers are warned against selling, as BATES NUMBERING MACHINES, AUTOMATIC HAND NUMBERING MACHINES not manufactured by the BATES MANUFACTURING CO., ORANGE, N. J.

THE UNITED STATES CIRCUIT COURT for the District of New Jersey, at a session held at Trenton, N. J., on October 2, 1909, issued a peremptory injunction restraining the defendant from any further use of the words BATES NUMBERING MACHINE COMPANY as its corporate name, and from using the expression BATES NUMBERING MACHINE in connection with the sales of any automatic hand numbering machines not of our make, or in connection with the offering or advertising for sale of such machine.

The injunction is sweeping in character. It insures protection to the public and to ourselves. Henceforth the public can be assured that automatic hand numbering machines offered for sale as BATES NUMBERING MACHINES or BATES AUTOMATIC NUMBERING MACHINES are the genuine product, to the perfection of which we have given many years of intelligent, patient effort. If our machine were not of high quality and efficiency, it would not be imitated —failures do not breed voluntary imitation. If the words, BATES NUMBERING MACHINE did not signify the perfection of mechanical excellence in the eyes of the public—if they were not representative of honesty and merit, the infringement would never have resulted and it would never have been necessary to issue the injunction, of which the following is a copy:—

THE PRESIDENT OF THE UNITED STATES OF AMERICA
TO
(L. S.) BATES NUMBERING MACHINE COMPANY, its officers, attorneys, agents, servants and employees, and each and every of them, GREETING:

WHEREAS, In a certain action brought in our United States Circuit Court for the District of New Jersey by the Bates Manufacturing Company as complainant against you, Bates Numbering Machine Company, as defendant, it was ordered that a preliminary injunction should issue against you, the said Bates Numbering Machine Company;

Now, THEREFORE, We do strictly command and enjoin you, the said Bates Numbering Machine Company, your officers, attorneys, agents, servants and employees, and each and every of you, under the penalties that may fall on you in case of disobedience, that you forthwith and until the further order of this Court, desist from any further use of the words "Bates Numbering Machine Company" as your corporate name or as such corporate name any other words which sufficiently resemble the trade name of the complainant's product, to wit: "Bates Numbering Machine," as to be likely to mislead or deceive the public into thinking or believing that the automatic hand numbering machines put out by you are the product of the complainant, and from employing or using the expression "Bates Numbering Machine" in connection with the sales of any automatic hand numbering machine not of the complainant's make, or in connection with the offering or advertising for sale thereof, and that you further desist from filling any orders or awards calling for a "Bates Numbering Machine" with a machine or machines of other make than that of the complainant or from seeking to induce prospective purchasers to change orders, proposals and awards calling for a "Bates Numbering Machine" so as to describe or specify a machine or machines of other make from that of the complainant, without at the same time clearly and unmistakably informing such purchaser that the machines made by you are not those made by the "Bates Manufacturing Company," and that such company and not you began to advertise and for many years exclusively advertised said machines by the trade name, "Bates Numbering Machine."

WITNESS the Honorable Melville W. Fuller, Chief Justice of the United States, at the City of Trenton, this fifth day of October, in the year of our Lord one thousand nine hundred and nine.

H. D. OLIPHANT, *Clerk.*

DELOS HOLDEN, ESQ., *Solicitor for Complainant.*

We object to no competition that is fair. We do object to any concern trading upon our name and reputation and endeavoring to make the public believe that it is buying genuine Bates Numbering Machines when they are not made by us.

A Complete Copy of this decision will be mailed to anyone on request

BATES MANUFACTURING CO., ORANGE, N. J.

New York Office, 10 Fifth Avenue

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an angel with a piece of holly in its hand, a gold horseshoe and mistletoe made of a patented composition and standing out boldly from the surface of the card.

In another series of eleven styles retailing at 10 cents there are a number of floral designs, mistletoe, holly, combined with various objects typical of the day like Christmas bells and good made horseshoes.

POST CARD ALBUMS.

Post card albums of handsome appearance are being shown in the salesrooms of A. L. Salomon & Co., 345 Broadway, New York. The covers range from buffs to browns in delicate shades, and the prices at retail run from 10 cents to $3.50. Many of them have designs in holly, showing both the berries and leaves in natural colors. A number of the designs are embossed. Other covers are made of linen. Some of these are heavily embossed with birds colored to the life. The birds are almost lifelike. The line is very extensive, containing 92 numbers.

METAL DOGS.

Dogs in metal and measuring only about two inches in height are being sold by A. L. Salomon & Co., 345 Broadway, New York, for decorative purposes. The animals form a set, making a dog band. Each one stands on his hind legs and holds some musical instrument. One dog plays a cornet, another a trombone, the cymbals, a flute. A lifelike appearance is given to the images by a spring on which the heads are pivoted to move at the slightest touch. They sell at 15 cents retail and cost the trade $1 per dozen.

PLUSH GREETING CARDS.

Greeting cards of plush are a novelty taking with the trade. The background of each card is soft and velvety, and is illustrated with pictures of Christmas time, snowy roofs and windows opened on Christmas morning. In relief against the plush are lamp posts and telephone poles, to suggest messages appropriate to the season. The goods are on sale at the annex of the Tower Manufacturing and Novelty Company, at Leonard street, New York.

GIFT CONTAINER.

Added to a long line of Christmas novelties which the Dennison Manufacturing Co., Boston, New York, Chicago, and St. Louis, is showing this year is the Gift Container. This article is made to hold handkerchiefs, gold coin, gloves and other Christmas gifts. Those meant for handkerchiefs are decorated with holly and a picture of Santa Claus is printed with words appropriate to the season. It makes an excellent Christmas package for either mailing or placing under the family tree the night before Cris Cringle comes down the chimney. The other holders for gloves, money gifts, etc. are all made of heavy crepe paper and printed with rich colors.

TOYLAND POST OFFICE.

Toy Town Post Office is a winning novelty for this season. It consists of a post office made of card board folded and lithographed in colors which has all the appurtenances of a regular postal establishment. There are envelopes and not papers, mail bag, stamp pad and lead pencils, drops for the letters, and supplies of stamps printed in different colors. The outfits come in three sizes and sell for $1, 50 cents and 25 cents, and should prove excellent sellers, for they will take well with both girls and boys. The Milton Bradley Co., Springfield, Mass., makes the Toy Town Post Office for the trade.

SAFETY RAZOR.

The well-known Gillette safety razor is now being made in a "pocket edition." The blade is the same size as in the old Gillette, but the whole article takes up less space and is more compact. This latest number is so thin that the case and all can be slipped into the vest pocket or into the side of a traveling bag. The American News Company, 9-15 Park Place, New York, is handling this size Gillette for the trade.

Legal Phases of Retail Business

In this department THE AMERICAN STATIONER will present a series of carefully prepared articles of the utmost value to the retail stationers of the United States. These articles are duly copyrighted, and any one of them should be worth more than the price of a year's subscription to THE AMERICAN STATIONER to any wide-awake member of the trade. As they may not be required for immediate use subscribers who do not permanently preserve their files of THE AMERICAN STATIONER should cut out these articles and carefully file them away for ready reference in case of future need. By doing this they may save themselves many dollars.

XI.—Damage Suits Against Merchants for Injuries Received on the Premises.

By Elton J. Buckley.

Copyright, 1909.

A common type of civil action is that brought against retail dealers by customers or visitors who claim to have received some injury or damage while upon the dealers' premises through some negligence by him or his employees. I have been consulted many times on cases of this class and have seen hundreds of them come up in the courts for trial with varying results.

The rule which governs the liability of a dealer in such cases is simple and easily stated: He is a public storekeeper and invites the general public to come upon his premises. Any person, therefore, who is upon the premises by this invitation and who is injured by any cause for which the dealer can be held responsible through negligence, can cover all damages which he has sustained.

The rule is otherwise with a person who is not upon the premises by the express or implied invitation of the proprietor. He is considered in a sense a trespasser and only the most reckless or wanton negligence will in such a case make the proprietor responsible for injury sustained. I will try to make plain the distinction between persons on the premises by invitation and those not on in that way.

When I say by the invitation of the proprietor I do not mean an actual expressed invitation, but the invitation which the very act of keeping a store creates. The opening of a store and the offering of goods for sale is itself a direct invitation to come upon the premises. This is all the invitation which the law requires shall have been made.

Whether a person who is injured is actually upon the premises by invitation is a question of fact. Any person who went there for the purpose of buying goods would be. So would any person who went there, during proper hours, for the purpose of selling goods.

Both propositions require some qualifications, however. Take the case of a person who went into a store to buy goods. While in the store he wanders into a back room used for storing goods, or for any other purpose outside the sale and display of merchandise—a room where customers are not supposed to go and where they have no need to go.

He falls down a hatchway and is injured, or falls over a box and breaks a leg; or is injured in any other similar way. No action can be successfully brought against the proprietor, the reason being that the injured person is not upon that part of the premises in which he is injured by invitation.

If, however, the cause of such person's injuries was some wanton act of carelessness, the owner could be held responsible, even though such person was a trespasser, but the negligent act would have to be wanton indeed.

Take also the case of a salesman who goes into a store to sell goods. He has been there before for the same purpose, as have other salesmen, and the dealer does all his buying there. The latter, however, has conspicuously posted a sign in the front of his store and has also informed the salesman by word of mouth that he will do no buying except between 1 and 3 o'clock in the afternoon. A salesman in full knowledge of this goes in at 10 o'clock in the morning to sell goods and is injured. I am extremely clear that in this case also no ordinary liability for negligence would rest upon the dealer, for the salesman was not on the premises by invitation. On the contrary, he has been distinctly told not to come. Only when his injuries arose through the most reckless negligence could he hold the dealer liable.

So in the case with a canvasser or solicitor who goes into a store to sell something in defiance of a sign. "No canvassers, solicitors or peddlers allowed on these premises." If he is injured his status is that of a plain trespasser.

The question arises, what sort of negligence will render a storekeeper liable to an injured person who was in his store by invitation? This negligence takes innumerable forms. If he leaves a protruding nail somewhere and a customer tears his clothing upon it. Or if he leaves something slippery on his floor and a customer falls on it and is injured. Or if some boxes or cases, insecurely piled, topple and fall on a customer, injuring him. As stated, forms of this type of negligence are without number—any careless, negligent act of commission or omission done by the dealer himself or his clerks will render him liable for any actual damage.

In such case the measure of damages is a fair compensation for what has been suffered. If a customer's overcoat is ruined, its fair value. If a customer fell and broke a limb, his doctor's bill and other expenses, plus fair compensation for his pain and suffering and loss of earning power. Only rarely will the courts give what are termed punitive damages, that is, damages in excess of those actually suffered, which are given in order to punish the responsible author.

It can be adopted as a safe rule that it is always a wise policy to settle these damage cases where it can be done on a reasonable basis. Naturally there are cases where there is no vestige of legal liability, and where as a matter of principle the dealer feels that he must defend. In the average case, however, the legal question of liability is a mooted question which will cost money to litigate. In many such cases a settlement can be effected upon some such basis as paying the doctor's bill, or replacing a coat or other clothing, and it is almost always the cheaper and the wiser course to adjust the matter in that fashion.

Bates' Injunction.

The following communication from the Bates Manufacturing Company, of Orange, N. J., is of interest to dealers:

"Through the injunction lately granted the Bates Manufacturing Company, of Orange, N. J., manufacturers of the Bates hand numbering machine, dealers and stationers may now be certain that the machines offered them as Bates hand numbering machines are as represented.

"It is regrettable that such unpleasant contingencies arise, as in the present instance, as to cause such steps to be taken, but for the protection of dealer and consumer, as well as manufacturer, it is occasionally necessary.

"The court ruling in this case is definite in favor of the Bates Manufacturing Company and assures clear sailing in the future for the manufacturers as well as for the dealers handling the Bates hand numbering machine."

Want Stationery.

A report has been received from an American Consular officer in the Far East, in which he states that the local Government and certain missions are rapidly extending their educational systems to all parts of the kingdom, so that there is a demand for all classes of stationery and school supplies. As the English language is in general use, prices quoted, cost, insurance, and freight, in English terms, would serve the best purpose.

The desired information will be furnished to those who write to the Bureau of Manufactures, Washington, D. C., and mention "file No. 4,060."

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THE QUAKER CITY

Predict Biggest Holiday Season of a Decade—New Paper Company Starts—City Stationery Appropriations.

PHILADELPHIA, Nov. 23.—If all the city retailers had taken the advice some did which THE STATIONER gave some weeks ago, to place immediate orders for their lines, the shortage which is already in evidence would not have affected them. THE STATIONER advised them to follow the example of the country trade, which more than a month ago sent to the jobbers its holiday requirements and asked for immediate shipments. But in town, simply because the jobbers are so close at hand, many of the retailers fell into their old-time custom of forgetting about the holiday line until Thanksgiving Day has passed. And there is now evidence a-plenty that the jobbers' stocks will be exhausted long before the holiday trade normally is over.

Commenting upon the presence in the city today of the buyer for a large Southern jobbing house, who with taxicab made the rounds of both manufacturers and jobbers in this city in an effort to gather together additional holiday goods, principally toys, the head of one of the largest houses here said:

"This time a year ago I could have gone to New York and in an afternoon bought $5,000 worth of reorders where today I cannot get $50 worth. I refer of course to holiday toys, principally tin, but both of domestic and foreign manufacture. The importers take orders a season in advance and then the manufacturer starts. Of course there is always some excess stock made, but not a large amount. Last year this excess was a drug on the market; this year it is completely exhausted. Not for a half decade have we seen the importers so thoroughly cleaned out of goods as now."

Of course the shortage is particularly in Christmas goods, cheap tin toys leading; but still it is more than likely that even staple lines will be found unobtainable by belated buyers. For nothing short of a calamity can now prevent the biggest holiday season for a decade. There is a splendid market for every line of goods, staples and novelties. Money seems to be plentiful and the consumer seems to have no disposition to haggle over prices. Not for several years has there been such a demand for commercial engraving and printing as there is now. And school children who a year ago were glad to get a cheap pad now buy both pads and copybooks in variety.

The Department of Supplies, which is the purchasing agent for all the city offices, has just forwarded to Councils its estimate for 1910. The aggregate is $2,786,245, as against $1,458,430 originally appropriated for this year. There are many other items than stationery, printing, etc., in the schedules, but the department is still the purchaser of many hundreds of thousands dollars' worth of paper and ink and pencils and other staples.

Among the week's visitors was one of particular interest. Charles E. Dewey, who comes for the John A. Murphy Company to cover the territory so long traveled by his predecessor, C. A. Quimby. Others who called were John Selden of the National Blank Book Company, Oscar Magnus of Julius Pollack, Fred Kraemer of the American Hard Rubber Company, Henry F. Marquardt of the Essex Pad and Paper Company, and E. A. Ashley of the Japanese Tissue Mills.

The newly organized Whiting-Patterson Company is now receiving its envelope machines and is confident of being able to start production early next month. It will confine itself to staple commercial goods. Another newcomer in the field is the Franklin Paper Company, 630 Filbert street, which has been started by H. A. Jacobs, formerly of the Manufacturers' Paper Company, to sell wrapping paper and twine.

E. R. G.

The Chicago Loose Leaf and Binder Co., Chicago, has been incorporated for manufacturing and book binding; capital, $5,000. The incorporators are George H. Davis, James W. Taylor and Alexander H. Heyman, all of Chicago, Ill.

Mr. and Mrs. William Henry Richardson

Announce the arrival of their little son

William Henry Richardson, Junior

on the

Evening of Wednesday, the tenth of October nineteen hundred and nine
One hundred and five Garfield Avenue

This is engraved on a card about 3½ x 2½ inches, a stork being embossed in upper left-hand corner.

CARDS OF THANKS.

The following "thanks" are engraved on a black bordered card, the size of the card and width of border being optional, the regulation correspondence card being usually selected, either oblong or square:

IV

Mrs. William Henry Richardson

desires to thank

for kind inquiries during her recent illness

Garfield Avenue
One hundred and five

The family of
Mrs. William Henry Richardson
gratefully acknowledges

kind expression of sympathy and condolence

One hundred and five Garfield Avenue

(Size of card as Diagram IV.)

They may read "Mr. and Mrs. William Henry Richardson and family," etc., or

Mrs. William Henry Richardson
gratefully acknowledges

kind expression of sympathy in her bereavement

One hundred and five Garfield Avenue

(Size of card as Diagram IV.)

Letter Openers Not Knives.

The board of United States general appraisers has sustained a protest filed by A. L. Silberstein regarding the classification of mother-of-pearl letter openers. Duty was levied under a provision for "pocket knives." The importer alleged that the letter openers should be assessed at either 35 per cent as being in chief value of motherof-pearl or at 45 per cent under the metal paragraph. General Appraiser Fischer, who writes the decision for the board, is sustaining the importer's contention finds that some of the openers are entitled to enter as mother-of-pearl, while the others are admitted at 45 per cent. as manufactures of metal not specifically provided for.

Breaks Typewriting Record.

H. Otis Blaisdell, of New York, who made a world's record on Nov. 26, for fifteen minutes' copying on a typewriter, made a new record Nov. 27, for an hour at St. Joseph, Mo., by writing 6,184 words, or an average of 103 words a minute. The previous record was made by Miss Rose L. Fritz, whose average was 95 words.

Charles T. Bainbridge's Sons.

Charles T. Bainbridge's Sons', Brooklyn, New York, have been incorporated for the purpose of manufacturing paper, wood pulp, etc., with a capital of $100,000. The incorporators are H. C. Bainbridge, R. W. Bainbridge, H. C. Bainbridge and P. M. Bainbridge.

NEXT ITEM

of the labels, it is found each in three places distinctly states the product to be a compound of molasses and corn syrup.

As shown from the evidence, this compound contains no substance deleterious or injurious to the health; and, as it further appears from the evidence, under the practice of the department, commercial glucose may be properly labeled and sold under the name of "corn syrup," we are of the opinion there is nothing in the manner in which the cases of molasses involved in this controversy were labeled that is false or untrue, or which would tend to mislead or deceive a purchaser of ordinary prudence, and there is no eidence found in the record tending to show any one was so deceived or misled by the labels employed.

The authorities relied upon by the government to make out the charge of false branding, as shown by an examination, are cases in which it was determined the labels contained false statements as to the contents of the receptacle labeled. Such cases, for the reasons given, are not applicable to the facts in the case at bar.

The direction of the court to return a verdict in favor of the claimant was right, and must be affirmed.

It is so ordered.

♣ ♣ ♣

BATES MFG. CO. v. BATES NUMBERING MACH. CO.

(Circuit Court, D. New Jersey. September 25, 1909.)

712 Fed. 892.

1. Trade-Marks and Trade-Names—Unlawful Competition—Fraud—Deception of Public.

In a suit to restrain unlawful competition, equity does not concern itself with the means. If the result is fraudulent, and the public are induced thereby to purchase the goods of one under the belief that they are those of another, the means will be enjoined.

2. Trade-Marks and Trade-Names—"Unfair Competition"—Elements.

Unfair competition does not necessarily involve the violation of any exclusive right to the use of a word, mark, or symbol as it may arise from the use of words, etc., which everybody may use; the test being whether what has been done tends to pass off the goods of one for those of another, or to deprive such other of his rights.

3. Trade-Marks and Trade-Names—Unlawful Competition—Use of Corporate Name.

From 1891 to 1902 complainant alone made and sold a "Bates Automatic Hand Numbering Machine," having a consecutive duplicate and repeat movement, during all of which time and for several years thereafter it extensively and exclusively advertised the machine as "The Bates Numbering Machine," so that the purchasing public understood such name to exclusively designate complainant's machines. Bates, the patentee, under whose patents the machine was manufactured, severed his connection with complainant in 1895, afterwards organizing a corporation under the name "Bates Machine Company." In 1902 defendant under that name began manufacturing computing machines then designated as "Model No. 49" and "Model No. 50." In 1908 complainant obtained an injunction restraining defendant from putting out hand numbering machines in boxes bearing labels in imitation of those appearing on complainant's machine, whereupon defendant in 1909 changed its name to the "Bates Numbering Machine Company," and referred to its computing machines not by model numbers, but as "Bates Numbering Machines," in its advertising, etc. Held, that such use of the word "Bates" in connection with numbering machines constituted unlawful competition, and that complainant was entitled to injunction restraining defendant's use of the words "Bates Numbering Machine Company" as its corporate name, and from using any

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other words resembling "Bates Numbering Machines," the effect of which would be to mislead the public to believe that defendant's machines were those manufactured by complainant.

In Equity. Suit by the Bates Manufacturing Company against the Bates Numbering Machine Company to restrain an alleged unfair competition in trade. On motion for preliminary injunction. Heard on bill, with supporting affidavits. Granted.

See, also, 141 Fed. 213.

The complainant seeks to enjoin the defendant from the use of its corporate name, "Bates Numbering Machine Company," and from using the expression "Bates Numbering Machine," in connection with the sale of automatic hand numbering machines not of the complainant's make, and from filling orders calling for a "Bates Numbering Machine" with a machine other than that of the complainant, and from seeking to induce prospective purchasers to change orders, proposals, and awards calling for a "Bates Numbering Machine" so as to describe or specify a machine other than that of the complainant. The bill charges that the defendant changed its name from the "Bates Machine Company" to the "Bates Numbering Machine Company" fraudulently for the purpose of deceiving the public, and to obtain the benefit of complainant's advertisement and business reputation, and to identify itself and its business with that of complainant, and to palm off its goods as that of tne complainant; that the defendant has ever since such change of name been offering and advertising for sale its automatic hand numbering machines under the tradename and designation "Bates Numbering Machines," and has used and is using its corporate name "Bates Numbering Machine Company," and has and is wording its advertisements in such a way as to make it deceptively appear that the defendant is selling and offering for sale complainant's genuine "Bates Numbering Machines," and has sold and is selling its said numbering machines as those of complainant's manufacture, and that it has by the use of its corporate name and the said trade-name "Bates Numbering Machine" in its advertisements, etc., induced such purchasers to purchase defendant's automatic hand numbering machines as and for the machines of the complainant's manufacture, which such purchasers desired, and would have purchased from complainant had they not been deceived by the defendant's said fraudulent acts, with the result that the public has been deceived and complainant injured in its business. The bill thereupon prays that the defendant be perpetually enjoined from any further use of the word "Bates Numbering Machine Company" as its corporate name, or of any other words of such corporate name as would sufficiently resemble complainant's trade-name "Bates Numbering Machine," as to be likely to deceive or mislead the public into believing that the defendant's automatic hand numbering machine was complainant's product, and from employing or using the expression "Bates Numbering Machine" in connection with its sales of any automatic hand numbering machines not of complainant's make, or in connection with the offering or advertising the sale thereof, and from filling any orders for "Bates Numbering Machines" with any other than complainant's machines, and from seeking to induct prospective purchasers to change orders, proposals, and awards calling for "Bates Numbering Machines" so as to describe or specify a machine other than that of the complainant, and for a provisional injunction to like effect during the pendency of the suit.

The following statement of facts found from such affidavits is necessary for a proper understanding of the questions raised:

Both complainant and defendant are corporations. The former was organ-

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ized in 1890 under the laws of the State of New York, the latter in 1899 under the laws of the State of New Jersey. Both parties have from the time of their respective incorporations been engaged in the manufacture of various kinds of numbering machines designed by Edwin G. Bates, whose surname was used in the corporate title of each of these corporations. He was the patentee of these numbering devices, and an incorporator and stockholder of each of said corporations, but not at the same time. He severed his connection with the complainant about the year 1895, selling his stock holdings in that company, and began the business of manufacturing and selling hand numbering machines on his own account, carrying on the business for a short time in his own name, then using the name "Bates Machine Company." Subsequently the corporation of that name was organized, and the business enlarged and continued in that name until the change of name hereafter referred to. The complainant about the year 1891, began the manufacture and sale of an automatic hand numbering machine, capable of printing in consecutive order from one to any number having no more than seven digits, and of duplicating, triplicating, and quadruplicating any particular number, before advancing automatically to the next higher number, and, by the use of an adjustment, of repeating any of such numbers as many times as desired. That to each of such machines a name plate was affixed, bearing complainant's name and the words "Bates Automatic Numbering Machines" as a trade-mark. That in the year 1891 or 1892 complainant began, and ever since has continued, to advertise said machines in various publications and trade journals published in the United States, designating said machines as "Bates Numbering Machines," and has at all times in selling said machines applied thereto the words "Bates Automatic Numbering Machines," and designated the same in its advertisements by the trade-name "Bates Numbering Machine." That as a result of complainant's skill and enterprise in advertising said machines, and their satisfactory character, it obtained an extensive and lucrative business in said machines, and the name "Bates Numbering Machine" became widely and favorably known in connection therewith throughout the United States, and became associated and identified with the automatic hand numbering machine of complainant's manufacture, and with such machines only, in the minds of the public and the trade generally. That from the defendant's incorporation until 1902 or 1904 (the exact year being in dispute) numbering machines manufactured and sold by it were of a different character and served a different use from those manufactured by complainant. That about 1902 the defendant for the first time manufactured and sold an automatic hand numbering machine having consecutive, duplicate, and repeat movement, which came into direct competition with the complainant's said machine, and which the defendant catalogued as its model No. 49. That in the year following it placed another similar machine on the market, cataloguing it as Model No. 50. That each of said type of machine had a plate affixed thereto, describing it by model number and name and adress of defendant. That on the 31st of July, 1905, complainant filed its bill in this court against the defendant "The Bates Machine Company," praying that it be enjoined from using the name "Bates" on any hand numbering machine or on the package containing the same, or in any way connected with the sale or offering for sale thereof, or in any way whatsoever calculated to deceive the public, and from imitating the labels appearing on the boxes in which the complainant's numbering machines were packed. That as a result of the proceedings had in such cause said defendant by a decree of this court dated September 28,

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1908, was enjoined from putting out automatic hand numbering machines in boxes bearing labels in imitation of the labels appearing on the boxes in which complainant's machines were packed.

That subsequently, to wit, on or about the 15th day of January, 1909, defendant changed its name to the "Bates Numbering Machine Company." That prior to this change of name the automatic hand numbering machines manufactured by defendants, which came in competition with complainant's machines, were known by the trade as Model No. 49 and No. 50, and not as "Bates Numbering Machines," and were not described as "Bates Numbering Machines" in defendant's advertisements, but as models No. ——— (the appropriate letter or number following), but that subsequently thereto they were referred to as the "Bates Numbering Machines." That since, and by reason of such change of name, and the advertising of the defendant's machines as "Bates Numbering Machines," confusion has arisen in the trade as to the identity of these corporations; some of the trade addressing the one to the other's place of business under the impression that they were one and the same party. Several customers of the complainant gave orders to the defendant for its machines under the belief that they were giving such orders to the complainant for its machines.

Delos Holden (Melville Church, of counsel), for complainant.

John W. Queen, for defendant.

Rellstab, District Judge (after stating the facts as above). Without attempting to define what under the adjudicated cases will be enjoined as unfair in business competition, some of which will presently be cited, it may be said for present purposes that equity does not concern itself as to what the means, how, or with what intent they are used, if the result is fraud, and, if the public are induced thereby to purchase the goods of one under the belief that they are those of another, such means will be enjoined.

In Ludlow Vaive Mfg. Co. v. Pittsburg Mfg. Co. (C. C. A.) 166 Fed. 26-29, it was said:

"No arbitrary rules have ever been, nor ever can be, laid down by which courts of equity will furnish this protection. To establish such rules would, like definitions in the law, furnish the means by which fraud could successfully accomplish its ends."

In Howe Scale Co. v. Wyckoff et al., 198 U. S. 118, 25 Sup. Ct. 609, 49 L. Ed. 972, it was held that:

"The essence of the wrong in unfair competition consists in the sale of the goods of one person for that of another, and, if defendant is not attempting to palm off its goods as those of complainant, the action fails."

"Every man has a right to use his name reasonably and honestly in every way, whether in a firm or corporation, and it is only dishonesty in the use of the name this is condemned."

The following from Nims on Unfair Business Competition, supported by the cases cited by him, are helpful in deciding this case:

Unfair competition does not necessarily involve the violation of any exclusive right to the use of a word, mark, or symbol. It may arise from the use of words, etc., which everybody may use. The question is whether what was done in a special case tends to pass off the goods of one for those of another, or tends to deprive such other of his rights. If a name purely generic or descriptive or indicative of general qualities such as any one may use has by long association with goods of one person come to mean to the public his goods alone, and not such goods in general, other persons will be prohibited from using it. Pages 8 and 9.

"A trade-name may be either the name of the manufacturer of goods, or some name by which the manufactured goods have become generally

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known. There is a kind of property in such a name, and interference with it will be restrained by the court if there is a prospect of injury to the owner of it." Pages 22 and 23.

Rival manufacturers have no right by imitative devices to beguile the public into buying their wares under the impression that they are buying those of their rivals. Page 25.

A name may be so appropriated by user as to come to mean the goods of the plaintiff. Where such is the case, "the use of that name or one so nearly resembling it as to be likely to deceive as applicable to goods not plaintiff's may be the means of passing off those goods as and for the plaintiff's just as much as the use of a trademark." Pages 27 and 28.

"When one has established a trade or business in which he has used a particular name so that it has become known in trade as a designation of such person's goods, equity will protect him in the use thereof." Page 34.

Out of this difficulty which the courts have found in preserving this right which every man has to use his own name, and at the same time preventing injury and fraud arising from the exercise of that right, the doctrine of secondary meaning has been evolved. Words which form a part of the common stock of the language may become so thoroughly identified with some one person's business or goods that it is quite possible that the use of them alone without any qualifying words or other explanation by another manufacturer would deceive buyers into believing that there was but one concern or one brand of goods instead of two. Page 138.

On the same principle that one must not pass off his goods as those of another, he must not use his trade-name in such a way as to give the impression that it is the trade-name of another. Page 164.

A corporate name is chosen by the incorporators themselves, and, as they can make it what they will, their rights arising from its possession are less important and their responsibility for its use is greater than in the case of their own personal name. Page 197.

"No name may be chosen in naming a corporation which will cause the new corporation to be passed off as some other company already in existence, or that will, when attached to the goods made by the new company, pass those goods off as the goods of some other company." Page 206.

Applying the foregoing principles of law to the facts in this case, the solution is not difficult. From 1891 to 1902 or 1904 (the year being in dispute) complainant alone made and sold a "Bates Automatic Hand Numbering Machine," having a consecutive, duplicate, and repeat movement. During all this time, and for several years after, it extensively and exclusively advertised this machine as the "Bates Numbering Machine," and the purchasing public understood that such trade-name exclusively designated complainant's machine. This machine distinctly filling a trade want, the complainant obtained a large and lucrative business in dealing therein. About the year 1902 defendant, then named "Bates Machine Company," began the manufacture and sale of an automatic hand numbering machine, with like movements, and accomplishing the same purpose as that of the complainant. At first is made but one kind of such machine, which it designated as Model No. 49, soon following it, however, with another which it designated as Model No. 50. In cataloguing, marking, and advertising such machines they were not designated as "Bates Numbering Machines," but as "Automatic Hand Numbering Machines Model No. 49 or 50." The name of the defendant "Bates Machine Company" as the manufacturer of such machines appeared with such marking, publication, and advertising. This designation in marking and advertising defendant's machines continued until after it changed its name,

which took place on January 15, 1909. The course of the defendant up to this date was perfectly proper and legal. It had a right to put upon the market an automatic hand numbering machine in direct competition with the complainant, even to an exact duplication of its mechanism, if it did not infringe upon its patent rights. No such infringement is alleged. Its method and character of advertisement were unobjectionable. Nothing therein would suggest an attempt to trade on the reputation of an older competitor. Every ordinary intelligent person would see at once that a new competitor had entered the market.

A new condition of things took place, however, with the change of name and the change in the wording of the advertisement of such machines. Neither the "Bates Machine Company" as the name of the defendant, nor the advertisement of its machines as "Model No. 49 or 50," as manufactured by it, could be confused with the name of the complainant or the trade-name of its product, viz., "Bates Numbering Machine." But not so when it changed its name to the "Bates Numbering Machine Company," and began to advertise its machines by the same name as theretofore exclusively used to designate and advertise the machines of the complainant, and which name had then become firmly fixed in the mind of the trade and purchasing public as associated with the complainant's product. Not only confusion, but deception, was the necessary result of such conduct. A trade-name is usually more striking than the name of its user. It is likely to give more information about the product and calculated to make a more lasting impression on the mind than a mere trade-mark. Where such trade-name of the product is dissimilar to that of the manufacturer, it is likely to be remembered, even though the name of the person entitled thereto is overlooked or forgotten. Faulder & Co., Ltd. v. O. & G. Rushton, Ltd., 20 R. P. C. 477. In such a case such trade-name obtains a secondary meaning, even though in its primary sense it is not subject to the exclusive ownership of the trader.

In the recent case of Lowe Bros. Co. v. Toledo Varnish Co. (C. C. A.) 168 Fed. 627, it was held:

"The words 'High Standard' as applied to paints or varnishes are in themselves descriptive of quality, and cannot be monopolized as a trade-mark, but, where they have been used for a number of years by one manufacturer exclusively for a trade-mark, and have thereby acquired a secondary meaning with the trade and public as designating and identifying the products of such maker, their use by another in connection with similar goods in a way which may probably deceive purchasers will be enjoined as unfair and fraudulent competition."

The instances of confusion and deception shown in complainant's affidavits are but the natural consequences of the change of defendant's name and the changed wording of its advertisements. A glance at defendant's advertisements appearing in the April (1909) numbers of the magazines "System" and "Office Appliances" will convince of this. The headlines to both of these advertisements, "23 Cents Puts a Bates Numbering Machine on Your Desk," is the most prominent part thereof. It is not only displayed in larger and heavier type, but so blocked out as to make it the most striking to the eye. Without the advertiser's name and address, the trade would accept the whole as describing and advertising the complainant's machine. If the defendant's name were not so completely identified with the trade-name of the goods advertised, both a deception of the public and the diversion of the complainant's business would be the likely consequences; but with the changed name of the defendant nothing else could reasonably be looked for. The street or factory address

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added to defendant's name would not be likely to change such result. The reason for this is obvious, as between the flaring headlines proclaiming the trade-name and the name and address of the advertiser, the latter plays a minor part in the impression made on the mind of the reader. The jobber, because of his more frequent purchases, might readily see that a different concern was advertising, but not so the ultimate purchaser. To the latter the trade-name is associated with the reputation of the product rather than the name of the manufacturer. Lured by the advertisement of this old trade-name he would be as likely to send the order to the advertiser as to the rightful owner of such trade-name under the belief that he was dealing with the latter. The reprehensible purpose evidenced by this method of advertising is at least as striking as that condemned in Ludlow Valve Mfg. Co. v. Pittsburgh Mfg. Co. (C. C. A.) 166 Fed. 30.

The logical, and perhaps desired, result of such conduct on the part of the defendant is, first, a deceiving of purchasers into giving it their custom under the belief that they were dealing with the same parties whose goods had become favorably known under such trade term; and, second, the gradual appropriation to itself of the favorable reputation which the complainant had built up for its own goods through years of toil and at considerable expense. In this case the facts in the particulars that control the decision are similar to those in Wm Rogers Mfg. Co. v. R. W. Rogers Co. (C. C.) 66 Fed. 56, affirmed R. W. Rogers Co. v. Wm. Rogers Mfg. Co., 70 Fed. 1017, 17 C. C. A. 576; Garrett et al v. T. H. Garrett & Co., 78 Fed. 472, 24 C. C. A. 173; L. & P. Coates, Ltd., v. John Coates Thread Co. (C. C.) 135 Fed. 177; Charles S. Higgins Co. v. Higgins Soap Co., 144 N. Y. 462, 39 N. E. 490, 27 L. R. A. 42, 43 Am. St. Rep. 769; F. E. De Long v. De Long Hook & Eye Co., 89 Hun, 399, 35 N. Y. Supp. 509; Dodge Stationery Co. v. Dodge, 145 Cal. 380, 78 Pac. 879; Bissell Chilled Plow Works v. T. M. Bissell Plow Co. (C. C.) 121 Fed. 357; Lamb Knit Goods Co. v. Lamb Glove & Mitten Co., 120 Mich. 159, 78 N. W. 1072, 44 L. R. A. 841; International Silver Co. v. Wm. H. Rogers Corp., 67 N. J. Eq. 646, 69 Atl. 187, 110 Am. St. Rep. 506; North Cheshire & Manchester Brewing Co. v. Manchester Brewing Co. (1899) App. Cases, 83, in which the use of the corporate title was enjoined. To the same effect, see, also, Clark Thread Co. v. Armitage, 74 Fed. 936, 21, C, C, A. 178.

In my opinion the complainant has shown a clear case of unfair competition; and, in view of the former finding by this court that the defendant was guilty of unfair competition towards this complainant in imitating its labels, immediate, even though drastic, relief should be afforded. A preliminary injunction is granted restraining the defendant from any further use of the words "Bates Numbering Machine Company" as its corporate name, or as such corporate name any other words which sufficiently resemble the said trade-name of the complainant's product, to wit, "Bates Numbering Machine," as to be likely to mislead or deceive the public into thinking or believing that the automatic hand numbering machines put out by the defendant are the product of the complainant, and from employing or using the expression "Bates Numbering Machine" in connection with the sales of any automatic hand numbering machines not of the complainant's make, or in connection with the offering or advertising for sale thereof, and further restraining the defendant from filling any orders or awards calling for a "Bates Numbering Machine" with a machine or machines of other make than that of complainant, or from seeking to induce prospective purchasers to change orders, proposals, and awards calling for a "Bates Numbering Machine," so as to describe or

specify a machine or machines of other make than that of the complainant, without at the same time clearly and unmistakably informing such purchaser that the machines made by the defendant are not those made by the "Bates Manufacturing Company," and that such company and not the defendant began to advertise, and for many years exclusively advertised, said machines by the trade-name "Bates Numbering Machine."

* * *

CAPEWELL HORSE NAIL CO. v. MOONEY.

(Circuit Court of Appeals, Second Circuit. August 20, 1909.)

172 Fed. 826.

1. Trade-Marks and Trade-Names—Registration of Mark—Common-Law Trade-Mark.

In a suit for infringement of a trade-mark, objection to the validity of complainant's registration of the mark was not material where complainant had a common-law trade-mark in the device alleged to have been infringed.

2. Trade-Marks and Trade-Names—Infringement—Unfair Competition.

Infringement of complainant's trade-mark on horseshoe nails to simulate complainant's nails, and produce confusion in the minds of dealers and users, was unfair competition.

3. Courts—Jurisdiction — Infringement of Trade-Mark.

A bill may be maintained in the federal Circuit Court to restrain the infringement of a common-law trade-mark where other jurisdictional facts are present.

4. Trade-Marks and Trade-Names—Character of Marks—Ornamentation.

That a trade-mark, consisting of a check figure formed by intersecting lines impressed on the bevel face beneath the edge of horseshoe nails, was an ornamental device which added to the appearance of the nails, and also came to represent quality, did not prevent it from operating as a valid trade-mark.

5. Trade-Marks and Trade-Names—Infringement — Necessity — Horse Nails.

It was no defense to a suit to restrain the infringement of plaintiff's trade-mark consisting of a check figure formed of intersecting lines impressed on the bevel face beneath the heads of horseshoe nails that such mark was produced while the nail was passing through one of the rolls of the manufacturing machinery by which the nail was gripped and held in place; it not appearing that the pattern of the gripping surface of the roll was required to be the same as the trade-mark stamped on complainant's nails in order to their successful manufacture.

Appeal from the Circuit Court of the United States for the Northern District of New York.

Suit by the Capewell Horse Nail Company against Walworth M. Mooney. From a decree (167 Fed. 575) for complainant, defendant appeals. Affirmed.

This cause comes here upon appeal from a decree of the Circuit Court, Northern District of New York, enjoining defendant from making, using, or selling or offering for sale horse nails bearing the trade-mark of complainant such as have been heretofore made and sold by defendant or bearing any mark so similar to complainant's trade-mark as to be likely to deceive purchasers and the public.

The opinion of the Circuit Court is reported in 167 Fed. 575.

Robert W. Hardie, for appellant.

Edmund Wetmore and Oscar W. Jeffery, for appellee.

Before Lacombe, Coxe, and Noyes, Circuit Judges.

Lacombe, Circuit Judge. The mark consists of a pattern of small checks, formed by lines crossing each other diagonally, stamped upon the under or bevelled side or front face of the head of the horseshoe nails and substantially covering the surface of that

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NEXT ITEM

BATES MFG. CO. v. BATES NUMBERING MACH. CO.

(Circuit Court, D. New Jersey. September 25, 1909.)

1. TRADE-MARKS AND TRADE-NAMES (§ 75*)—UNLAWFUL COMPETITION—FRAUD —DECEPTION OF PUBLIC.

In a suit to restrain unlawful competition, equity does not concern itself with the means. If the result is fraudulent, and the public are induced thereby to purchase the goods of one under the belief that they are those of another, the means will be enjoined.

[Ed. Note.—For other cases, see Trade-Marks and Trade-Names, Cent. Dig. § 86; Dec. Dig. § 75.*

Misleading or false labels, see note to Raymond v. Royal Baking Powder Co., 29 C. C. A. 250.]

2. TRADE-MARKS AND TRADE-NAMES (§ 68*)—"UNFAIR COMPETITION"—ELEMENTS.

Unfair competition does not necessarily involve the violation of any exclusive right to the use of a word, mark, or symbol as it may arise from the use of words, etc., which everybody may use; the test being whether what has been done tends to pass off the goods of one for those of another, or to deprive such other of his rights.

[Ed. Note.—For other cases, see Trade-Marks and Trade-Names, Cent. Dig. § 79; Dec. Dig. § 68.*

For other definitions, see Words and Phrases, vol. 8, pp. 7174, 7824.

Unfair competition, see notes to Scheuer v. Muller, 20 C. C. A. 165; Lare v. Harper & Bros., 30 C. C. A. 376.]

3. TRADE-MARKS AND TRADE-NAMES (§ 73*)—UNLAWFUL COMPETITION—USE OF CORPORATE NAME.

From 1891 to 1902 complainant alone made and sold a "Bates Automatic Hand Numbering Machine," having a consecutive duplicate and repeat movement, during all of which time and for several years thereafter it extensively and exclusively advertised the machine as "The Bates Numbering Machine," so that the purchasing public understood such name to exclusively designate complainant's machines. Bates, the patentee, under whose patents the machine was manufactured, severed his connection with complainant in 1895, afterwards organizing a corporation under the name "Bates Machine Company." In 1902 defendant under that name began manufacturing computing machines then designated as "Model No. 49" and "Model No. 50." In 1908 complainant obtained an injunction restraining defendant from putting out hand numbering machines in boxes bearing labels in imitation of those appearing on complainant's machine, whereupon defendant in 1909 changed its name to the "Bates Numbering Machine Company," and referred to its competing machines not by model numbers, but as "Bates Numbering Machines," in its advertising, etc. *Held*, that such use of the word "Bates" in connection with numbering machines constituted unlawful competition, and that complainant was entitled to injunction restraining defendant's use of the words "Bates Numbering Machine Company" as its corporate name, and from using any other words resembling "Bates Numbering Machine," the effect of which would be to mislead the public to believe that defendant's machines were those manufactured by complainant.

[Ed. Note.—For other cases, see Trade-Marks and Trade-Names, Cent. Dig. § 84; Dec. Dig. § 73.*

Use of corporate and firm names, see notes to R. W. Rogers Co. v. Wm. Rogers Mfg. Co., 17 C. C. A. 79; Kathreiner's Malzkaffee Fabriken Mit Beschraenkter Haftung v. Pastor Kneipp Medicine Co., 27 C. C. A. 357.]

In Equity. Suit by the Bates Manufacturing Company against the Bates Numbering Machine Company to restrain an alleged unfair com-

*For other cases see same topic & § NUMBER in Dec. & Am. Digs. 1907 to date, & Rep'r Indexes

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petition in trade. On motion for preliminary injunction. Heard on bill, with supporting and opposing affidavits. Granted.

See, also, 141 Fed. 213.

The complainant seeks to enjoin the defendant from the use of its corporate name, "Bates Numbering Machine Company," and from using the expression "Bates Numbering Machine," in connection with the sale of automatic hand numbering machines not of the complainant's make, and from filling orders calling for a "Bates Numbering Machine" with a machine other than that of the complainant, and from seeking to induce prospective purchasers to change orders, proposals, and awards calling for a "Bates Numbering Machine" so as to describe or specify a machine other than that of the complainant. The bill charges that the defendant changed its name from the "Bates Machine Company" to the "Bates Numbering Machine Company" fraudulently for the purpose of deceiving the public, and to obtain the benefit of complainant's advertisement and business reputation, and to identify itself and its business with that of complainant, and to palm off its goods as that of the complainant; that the defendant has ever since such change of name been offering and advertising for sale its automatic hand numbering machines under the trade-name and designation "Bates Numbering Machines," and has used and is using its corporate name "Bates Numbering Machine Company," and has and is wording its advertisements in such a way as to make it deceptively appear that the defendant is selling and offering for sale complainant's genuine "Bates Numbering Machines," and has sold and is selling its said numbering machines as those of complainant's manufacture, and that it has by the use of its corporate name and the said trade-name "Bates Numbering Machine" in its advertisements, etc., induced such purchasers to purchase defendant's automatic hand numbering machines as and for the machines of the complainant's manufacture, which such purchasers desired, and would have purchased from complainant had they not been deceived by the defendant's said fraudulent acts, with the result that the public has been deceived and complainant injured in its business. The bill thereupon prays that the defendant be perpetually enjoined from any further use of the word "Bates Numbering Machine Company" as its corporate name, or of any other words of such corporate name as would sufficiently resemble complainant's trade-name "Bates Numbering Machine," as to be likely to deceive or mislead the public into believing that the defendant's automatic hand numbering machine was complainant's product, and from employing or using the expression "Bates Numbering Machine" in connection with its sales of any automatic hand numbering machines not of complainant's make, or in connection with the offering or advertising the sale thereof, and from filling any orders for "Bates Numbering Machines" with any other than complainant's machines, and from seeking to induce prospective purchasers to change orders, proposals, and awards calling for "Bates Numbering Machines" so as to describe or specify a machine other than that of the complainant, and for a provisional injunction to like effect during the pendency of the suit.

The following statement of facts found from such affidavits is necessary for a proper understanding of the questions raised:

Both complainant and defendant are corporations. The former was organized in 1890 under the laws of the state of New York, the latter in 1899 under the laws of the state of New Jersey. Both parties have from the time of their respective incorporations been engaged in the manufacture of various kinds of numbering machines designed by Edwin G. Bates, whose surname was used in the corporate title of each of these corporations. He was the patentee of these numbering devices, and an incorporator and stockholder of each of said corporations, but not at the same time. He severed his connection with the complainant about the year 1895, selling his stock holdings in that company, and began the business of manufacturing and selling hand numbering machines on his own account, carrying on the business for a short time in his own name, then using the name "Bates Machine Company." Subsequently the corporation of that name was organized, and the business enlarged and continued in that name until the change of name hereafter referred to. The complainant, about the year 1891, began the manufacture and

sale of an automatic hand numbering machine, capable of printing in consecutive order from one to any number having no more than seven digits, and of duplicating, triplicating, and quadruplicating any particular number, before advancing automatically to the next higher number, and, by the use of an adjustment, of repeating any of such numbers as many times as desired. That to each of such machines a name plate was affixed, bearing complainant's name and the words "Bates Automatic Numbering Machine" as a trade-mark. That in the year 1891 or 1892 complainant began, and ever since has continued, to advertise said machines in various publications and trade journals published in the United States, designating said machines as "Bates Numbering Machines," and has at all times in selling said machines applied thereto the words "Bates Automatic Numbering Machines," and designated the same in its advertisements by the trade-name "Bates Numbering Machine." That as a result of complainant's skill and enterprise in advertising said machines, and their satisfactory character, it obtained an extensive and lucrative business in said machines, and the name "Bates Numbering Machine" became widely and favorably known in connection therewith throughout the United States, and became associated and identified with the automatic hand numbering machine of complainant's manufacture, and with such machines only, in the minds of the public and the trade generally. That from the defendant's incorporation until 1902 or 1904 (the exact year being in dispute) numbering machines manufactured and sold by it were of a different character and served a different use from those manufactured by complainant. That about 1902 the defendant for the first time manufactured and sold an automatic hand numbering machine having consecutive, duplicate, and repeat movement, which came into direct competition with the complainant's said machine, and which the defendant catalogued as its model No. 49. That in the year following it placed another similar machine on the market, cataloguing it as Model No. 50. That each of said type of machine had a plate affixed thereto, describing it by model number and name and address of defendant. That on the 31st of July, 1905, complainant filed its bill in this court against the defendant "The Bates Machine Company," praying that it be enjoined from using the name "Bates" on any hand numbering machine or on the packages containing the same, or in any way connected with the sale or offering for sale thereof, or in any way whatsoever calculated to deceive the public, and from imitating the labels appearing on the boxes in which the complainant's numbering machines were packed. That as a result of the proceedings had in such cause said defendant by a decree of this court dated September 28, 1908, was enjoined from putting out automatic hand numbering machines in boxes bearing labels in imitation of the labels appearing on the boxes in which complainant's machines were packed.

That subsequently, to wit, on or about the 15th day of January, 1909, defendant changed its name to the "Bates Numbering Machine Company." That prior to this change of name the automatic hand numbering machines manufactured by defendants, which came in competition with complainant's machines, were known by the trade as Model No. 49 and No. 50, and not as "Bates Numbering Machines," and were not described as "Bates Numbering Machines" in defendant's advertisements, but as models No. ——— (the appropriate letter or number following), but that subsequently thereto they were referred to as the "Bates Numbering Machines." That since, and by reason of such change of name, and the advertising of the defendant's machines as "Bates Numbering Machines," confusion has arisen in the trade as to the identity of these corporations; some of the trade addressing the one to the other's place of business under the impression that they were one and the same party. Several customers of the complainant gave orders to the defendant for its machines under the belief that they were giving such orders to the complainant for its machines.

Delos Holden (Melville Church, of counsel), for complainant.
John W. Queen, for defendant.

RELLSTAB, District Judge (after stating the facts as above). Without attempting to define what under the adjudicated cases will be

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enjoined as unfair in business competition, some of which will presently be cited, it may be said for present purposes that equity does not concern itself as to what the means, how, or with what intent they are used, if the result is fraud, and, if the public are induced thereby to purchase the goods of one under the belief that they are those of another, such means will be enjoined.

In Ludlow Valve Mfg. Co. v. Pittsburg Mfg. Co. (C. C. A.) 166 Fed. 26–29, it was said:

"No arbitrary rules have ever been; nor ever can be, laid down by which courts of equity will furnish this protection. To establish such rules would, like definitions in the law, furnish the means by which fraud could successfully accomplish its ends."

In Howe Scale Co. v. Wyckoff et al., 198 U. S. 118, 25 Sup. Ct. 609, 49 L. Ed. 972, it was held that:

"The essence of the wrong in unfair competition consists in the sale of the goods of one person for that of another, and, if defendant is not attempting to palm off its goods as those of complainant, the action fails."

"Every man has a right to use his name reasonably and honestly in every way, whether in a firm or corporation. * * * It is not the use, but dishonesty in the use of the name, that is condemned."

The following from Nims on Unfair Business Competition, supported by the cases cited by him, are helpful in deciding this case:

Unfair competition does not necessarily involve the violation of any exclusive right to the use of a word, mark, or symbol. It may arise from the use of words, etc., which everybody may use. The question is whether what was done in a special case tends to pass off the goods of one for those of another, or tends to deprive such other of his rights. If a name purely generic or descriptive or indicative of general qualities such as any one may use has by long association with goods of one person come to mean to the public his goods alone, and not such goods in general, other persons will be prohibited from using it. Pages 8 and 9.

"A trade-name may be either the name of the manufacturer of goods, or some name by which the manufactured goods have become generally known. There is a kind of property in such a name, and interference with it will be restrained by the court if there is a prospect of injury to the owner of it." Pages 22 and 23.

Rival manufacturers have no right by imitative devices to beguile the public into buying their wares under the impression that they are buying those of their rivals. Page 25.

A name may be so appropriated by user as to come to mean the goods of the plaintiff. Where such is the case, "the use of that name or one so nearly resembling it as to be likely to deceive as applicable to goods not plaintiff's may be the means of passing off those goods as and for the plaintiff's just as much as the use of a trade-mark." Pages 27 and 28.

"When one has established a trade or business in which he has used a particular name so that it has become known in trade as a designation of such person's goods, equity will protect him in the use thereof." Page 34.

Out of this difficulty which the courts have found in preserving this right which every man has to use his own name, and at the same time preventing injury and fraud arising from the exercise of that right, the doctrine of secondary meaning has been evolved. Words which form a part of the common stock of the language may become so thoroughly identified with some one person's business or goods that it is quite possible that the use of them alone without any qualifying words or other explanation by another manufacturer would deceive buyers into believing that there was but one concern or one brand of goods instead of two. Page 138.

On the same principle that one must not pass off his goods as those of another, he must not use his trade-name in such a way as to give the impression that it is the trade-name of another. Page 164.

A corporate name is chosen by the incorporators themselves, and, as they can make it what they will, their rights arising from its possession are less important and their responsibility for its use is greater than in the case of their own personal name. Page 197.

"No name may be chosen in naming a corporation which will cause the new corporation to be passed off as some other company already in existence, or that will, when attached to the goods made by the new company, pass those goods off as the goods of some other company." Page 206.

Applying the foregoing principles of law to the facts in this case, the solution is not difficult. From 1891 to 1902 or 1904 (the year being in dispute) complainant alone made and sold a "Bates Automatic Hand Numbering Machine," having a consecutive, duplicate, and repeat movement. During all this time, and for several years after, it extensively and exclusively advertised this machine as the "Bates Numbering Machine," and the purchasing public understood that such trade-name exclusively designated complainant's machine. This machine distinctly filling a trade want, the complainant obtained a large and lucrative business in dealing therein. About the year 1902 defendant, then named "Bates Machine Company," began the manufacture and sale of an automatic hand numbering machine, with like movements, and accomplishing the same purpose as that of the complainant. At first it made but one kind of such machine, which it designated as Model No. 49, soon following it, however, with another which it designated as Model No. 50. In cataloguing, marking, and advertising such machines they were not designated as "Bates Numbering Machines," but as "Automatic Hand Numbering Machines Model No. 49 or 50." The name of the defendant "Bates Machine Company" as the manufacturer of such machines appeared with such marking, publication, and advertising. This designation in marking and advertising defendant's machines continued until after it changed its name, which took place on January 15, 1909. The course of the defendant up to this date was perfectly proper and legal. It had a right to put upon the market an automatic hand numbering machine in direct competition with the complainant, even to an exact duplication of its mechanism, if it did not infringe upon its patent rights. No such infringement is alleged. Its method and character of advertisement were unobjectionable. Nothing therein would suggest an attempt to trade on the reputation of an older competitor. Every ordinary intelligent person would see at once that a new competitor had entered the market.

A new condition of things took place, however, with the change of name and the change in the wording of the advertisement of such machines. Neither the "Bates Machine Company" as the name of the defendant, nor the advertisement of its machines as "Model No. 49 or 50," as manufactured by it, could be confused with the name of the complainant or the trade-name of its product, viz., "Bates Numbering Machine." But not so when it changed its name to the "Bates Numbering Machine Company," and began to advertise its machines by the same name as theretofore exclusively used to designate and advertise the machines of the complainant, and which name had then become firmly fix-

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ed in the mind of the trade and purchasing public as associated with the complainant's product. Not only confusion, but deception, was the necessary result of such conduct. A trade-name is usually more striking than the name of its user. It is likely to give more information about the product and calculated to make a more lasting impression on the mind than a mere trade-mark. Where such trade-name of the product is dissimilar to that of the manufacturer, it is likely to be remembered, even though the name of the person entitled thereto is overlooked or forgotten. Faulder & Co., Ltd., v. O. & G. Rushton, Ltd., 20 R. P. C. 477. In such a case such trade-name obtains a secondary meaning, even though in its primary sense it is not subject to the exclusive ownership of the trader.

In the recent case of Lowe Bros. Co. v. Toledo Varnish Co. (C. C. A.) 168 Fed. 627, it was held:

"The words 'High Standard' as applied to paints or varnishes are in themselves descriptive of quality, and cannot be monopolized as a trade-mark, but, where they have been used for a number of years by one manufacturer exclusively for a trade-mark, and have thereby acquired a secondary meaning with the trade and public as designating and identifying the products of such maker, their use by another in connection with similar goods in a way which may probably deceive purchasers will be enjoined as unfair and fraudulent competition."

The instances of confusion and deception shown in complainant's affidavits are but the natural consequences of the change of defendant's name and the changed wording of its advertisements. A glance at defendant's advertisements appearing in the April (1909) numbers of the magazines "System" and "Office Appliances" will convince of this. The headlines to both of these advertisements, "23 Cents Puts a Bates Numbering Machine on Your Desk," is the most prominent part thereof. It is not only displayed in larger and heavier type, but so blocked out as to make it the most striking to the eye. Without the advertiser's name and address, the trade would accept the whole as describing and advertising the complainant's machine. If the defendant's name were not so completely identified with the trade-name of the goods advertised, both a deception of the public and the diversion of the complainant's business would be the likely consequences; but with the changed name of the defendant nothing else could reasonably be looked for. The street or factory address added to defendant's name would not be likely to change such result. The reason for this is obvious, as between the flaring headlines proclaiming the trade-name and the name and address of the advertiser, the latter plays a minor part in the impression made on the mind of the reader. The jobber, because of his more frequent purchases, might readily see that a different concern was advertising, but not so the ultimate purchaser. To the latter the trade-name is associated with the reputation of the product rather than the name of the manufacturer. Lured by the advertisement of this old trade-name he would be as likely to send the order to the advertiser as to the rightful owner of such trade-name under the belief that he was dealing with the latter. The reprehensible purpose evidenced by this method of advertising is at least as striking

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as that condemned in Ludlow Valve Mfg. Co. v. Pittsburgh Mfg. Co. (C. C. A.) 166 Fed. 30.

The logical, and perhaps desired, result of such conduct on the part of the defendant is, first, a deceiving of purchasers into giving it their custom under the belief that they were dealing with the same parties whose goods had become favorably known under such trade term; and, second, the gradual appropriation to itself of the favorable reputation which the complainant had built up for its own goods through years of toil and at considerable expense. In this case the facts in the particulars that control the decision are similar to those in Wm. Rogers Mfg. Co. v. R. W. Rogers Co. (C. C.) 66 Fed. 56, affirmed R. W. Rogers Co. v. Wm. Rogers Mfg. Co., 70 Fed. 1017, 17 C. C. A. 576; Garrett et al. v. T. H. Garrett & Co., 78 Fed. 472, 24 C. C. A. 173; J. & P. Coates, Ltd., v. John Coates Thread Co. (C. C.) 135 Fed. 177; Charles S. Higgins Co. v. Higgins Soap Co., 144 N. Y. 462, 39 N. E. 490, 27 L. R. A. 42, 43 Am. St. Rep. 769; F. E. De Long v. De Long Hook & Eye Co., 89 Hun, 399, 35 N. Y. Supp. 509; Dodge Stationery Co. v. Dodge, 145 Cal. 380, 78 Pac. 879; Bissell Chilled Plow Works v. T. M. Bissell Plow Co. (C. C.) 121 Fed. 357; Lamb Knit Goods Co. v. Lamb Glove & Mitten Co., 120 Mich. 159, 78 N. W. 1072, 44 L. R. A. 841; International Silver Co. v. Wm. H. Rogers Corp., 67 N. J. Eq. 646, 60 Atl. 187, 110 Am. St. Rep. 506; North Cheshire & Manchester Brewing Co. v. Manchester Brewing Co. (1899) App. Cases, 83, in which the use of the corporate title was enjoined. To the same effect, see, also, Clark Thread Co. v. Armitage, 74 Fed. 936, 21 C. C. A. 178.

In my opinion the complainant has shown a clear case of unfair competition; and, in view of the former finding by this court that the defendant was guilty of unfair competition towards this complainant in imitating its labels, immediate, even though drastic, relief should be afforded. A preliminary injunction is granted restraining the defendant from any further use of the words "Bates Numbering Machine Company" as its corporate name, or as such corporate name any other words which sufficiently resemble the said trade-name of the complainant's product, to wit, "Bates Numbering Machine," as to be likely to mislead or deceive the public into thinking or believing that the automatic hand numbering machines put out by the defendant are the product of the complainant, and from employing or using the expression "Bates Numbering Machine" in connection with the sales of any automatic hand numbering machines not of the complainant's make, or in connection with the offering or advertising for sale thereof, and further restraining the defendant from filling any orders or awards calling for a "Bates Numbering Machine" with a machine or machines of other make than that of complainant, or from seeking to induce prospective purchasers to change orders, proposals, and awards calling for a "Bates Numbering Machine," so as to describe or specify a machine or machines of other make than that of the complainant, without at the same time clearly and unmistakably informing such purchaser that the machines made by the defendant are not those made by the

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"Bates Manufacturing Company," and that such company and not the defendant began to advertise, and for many years exclusively advertised, said machines by the trade-name "Bates Numbering Machine."

HARTFORD FIRE INS. CO. v. ERIE R. CO.

(Circuit Court, S. D. New York. May 26, 1909.)

1. COURTS (§ 414*)—JURISDICTION OF FEDERAL COURTS—CIRCUIT COURT FOR SOUTHERN DISTRICT OF NEW YORK—CONSTRUCTION OF STATUTE.

Rev. St. § 657 (U. S. Comp. St. 1901, p. 529), which provides that "the original jurisdiction of the Circuit Court for the Southern District of New York shall not be construed to extend to causes of action arising within the Northern district of said state," must be construed as meaning by the words "Northern district of said state" the territory comprised within said district when the section was enacted; and the division of said district into the Northern and Western districts by Act May 12, 1900, c. 391, 31 Stat. 175, amending Rev. St. § 541 (U. S. Comp. St. 1901, p. 394), did not have the effect of enlarging the jurisdiction of the Circuit Court for the Southern District to include causes of action arising in the Western district.

[Ed. Note.—For other cases, see Courts, Cent. Dig. § 1108; Dec. Dig. § 414.*]

2. COURTS (§ 328*)—JURISDICTION OF FEDERAL COURTS—ACTION BY ASSIGNEE.

An assignment of a cause of action, although without consideration and for the purpose of suit in a federal court, is not collusive, so as to deprive that court of jurisdiction, where it exceeds the jurisdictional amount, and the assignor might have brought suit in that court thereon.

[Ed. Note.—For other cases, see Courts, Cent. Dig. § 892; Dec. Dig. § 328.*

Jurisdiction of Circuit Court as determined by the amount in controversy, see notes to Auer v. Lombard, 19 C. C. A. 75; Tennent-Stribling Shoe Co. v. Roper, 36 C. C. A. 459.]

3. ACTION (§ 38*)—SINGLE CAUSES OF ACTION—CLAIMS UNITED BY ASSIGNMENTS.

Claims against a railroad company for the alleged negligent burning of a building, although originally existing in favor of different persons, when united in one by assignment, constitute a single cause of action.

[Ed. Note.—For other cases, see Action, Cent. Dig. § 549; Dec. Dig. § 38.*]

4. COURTS (§ 328*)—JURISDICTION OF FEDERAL COURTS—ACTIONS BY ASSIGNEES.

A person holding claims, each below the jurisdictional amount, but together aggregating more than $2,000, and constituting, when so united, a single cause of action, may, if permitted by the local rules of joinder, bring them all together for determination into a federal court.

[Ed. Note.—For other cases, see Courts, Cent. Dig. § 891; Dec. Dig. § 328.*]

5. COURTS (§ 328*)—JURISDICTION OF FEDERAL COURTS—ACTION BY ASSIGNEE.

Plaintiff and other insurance companies paid losses on buildings destroyed by fire alleged to have been negligently caused by defendant railroad company. One was a foreign corporation, which paid losses on three buildings; one being more than $2,000 and the others less. Others paid losses on the same buildings and others, each less than $2,000 but aggregating more than that amount as to each building. All of the

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*For other cases see same topic & § NUMBER in Dec. & Am. Digs. 1907 to date, & Rep'r Indexes

NEXT ITEM

The Bates Manufacturing Co.

of Orange, N. J.

Manufacturers of the ORIGINAL and ONLY Bates Automatic Hand Numbering Machine

obtained an injunction against The Bates Numbering Machine Company of Brooklyn for unfair and misleading competition.

Dealers are warned against selling, as BATES NUMBERING MACHINES, AUTOMATIC HAND NUMBERING MACHINES not manufactured by the BATES MANUFACTURING COMPANY, ORANGE, N. J.

THE UNITED STATES CIRCUIT COURT for the District of New Jersey, at a session held at Trenton, N. J., on October 2, 1909, issued a peremptory injunction restraining the defendant from any further use of the words BATES NUMBERING MACHINE COMPANY as its corporate name, and from using the expression BATES NUMBERING MACHINE in connection with the sales of any automatic hand numbering machines not of our make, or in connection with the offering or advertising for sale of such machines.

The injunction is sweeping in character. It insures protection to the public and to ourselves. Henceforth the public can be assured that automatic hand numbering machines offered for sale as BATES NUMBERING MACHINES or BATES AUTOMATIC NUMBERING MACHINES are the genuine product, to the perfection of which we have given many years of intelligent, patient effort. If our machine were not of high quality and efficiency, it would not be imitated—failures do not breed voluntary imitation. If the words BATES NUMBERING MACHINE did not signify the perfection of mechanical excellence in the eyes of the public—if they were not representative of honesty and merit, the infringement would never have resulted and it would never have been necessary to issue the injunction, of which the following is a copy:

THE PRESIDENT OF THE UNITED STATES OF AMERICA
TO
(L. S.) BATES NUMBERING MACHINE COMPANY, its officers, attorneys, agents, servants and employees, and each and every of them, GREETING:

WHEREAS, In a certain action brought in our United States Circuit Court for the District of New Jersey by the Bates Manufacturing Company as complainant against you, Bates Numbering Machine Company, as defendant, it was ordered that a preliminary injunction should issue against you, the said Bates Numbering Machine Company;

NOW, THEREFORE, We do strictly command and enjoin you, the said Bates Numbering Machine Company, your officers, attorneys, agents, servants and employees, and each and every of you, under the penalties that may fall on you in case of disobedience, that you forthwith and until the further order of this Court, desist from any further use of the words "Bates Numbering Machine Company" as your corporate name or as such corporate name any other words which sufficiently resemble the trade-name of the complainant's product, to wit: "Bates Numbering Machine," as to be likely to mislead or deceive the public into thinking or believing that the automatic hand-numbering machines put out by you are the product of the complainant, and from employing or using the expression "Bates Numbering Machine" in connection with the sales of any automatic hand-numbering machine not of the complainant's make, or in connection with the offering or advertising for sale thereof, and that you further desist from filling any orders or awards calling for a "Bates Numbering Machine" with a machine or machines of other make than that of the complainant or from seeking to induce prospective purchasers to change orders, proposals and awards calling for a "Bates Numbering Machine" so as to describe or specify a machine or machines of other make from that of the complainant, without at the same time clearly and unmistakably informing such purchaser that the machines made by you are not those made by the "Bates Manufacturing Company," and that such company and not you began to advertise and for many years exclusively advertised said machines by the trade-name, "Bates Numbering Machine."

WITNESS the Honorable Melville W. Fuller, Chief Justice of the United States, at the City of Trenton, this fifth day of October, in the year of our Lord one thousand nine hundred and nine.

H. D. OLIPHANT, *Clerk.*

DELOS HOLDEN, ESQ., *Solicitor for Complainant.*

We object to no competition that is fair. We do object to any concern trading upon our name and reputation and endeavoring to make the public believe that it is buying genuine Bates Numbering Machines when they are not made by us.

A Complete Copy of this decision will be mailed to any one on request.

BATES MANUFACTURING CO., ORANGE, N. J.

New York Office, 10 Fifth Avenue

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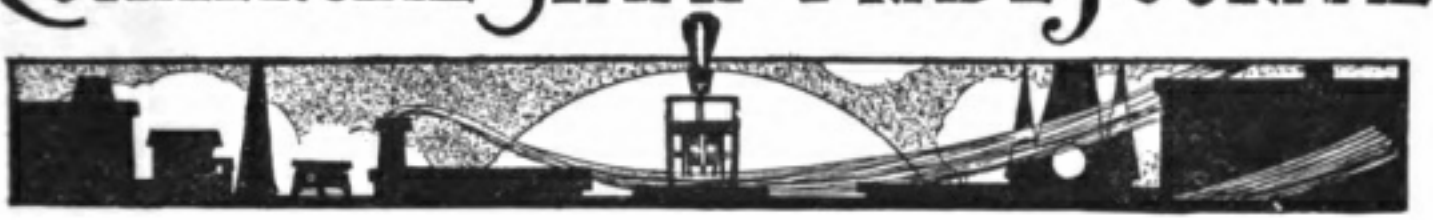
NEXT ITEM

COMMERCIAL STAMP TRADE JOURNAL



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ENTERED IN THE POST-OFFICE IN CHICAGO AS SECOND-CLASS MATTER IN 1892.

NOTES.

Prices of stamp material will now have to be raised and consequently the prices of stamps increased: How are you price cutters going to do it? Think now.

The Commercial Stamp Trade Journal stands for the good of all. We are in no way connected by special interests with the manufacturers and jobbers. We are as friendly to them as to the stamp and stencil and stationery houses. We advertise their goods and seek to bring to the retail houses the best suggestions and information that will be a benefit to them. We frequently receive letters from our subscribers asking for information and gladly give it to them to the best of our knowledge. With the co-operation of both the manufacturers and the stamp houses we will be able to succeed in making the Journal the most helpful organ to the entire trade.

The Bates Manufacturing Company of Orange, N. J., have secured a decision from the courts against The Bates Numbering Machine Company of New York City compelling them to drop the word "Numbering" from the corporate name, leaving the name "The Bates Machine Company." The trade should note this in sending in their orders to these companies.

Messrs. Wm. A. Force & Company, New York, recently sued The Bates Numbering Machine Company of New York for infringing on one of their patents on a routing machine, and secured a decision in their favor forbidding The Bates Numbering Machine Company to manufacture the appliance. The damages in the case, we understand, have been settled satisfactorily to both parties in the contest.

The Fall trade in all the stamp houses, from whom we have heard, is increasing in a rapid ratio. We are looking for greater prosperity than ever before. The holiday rush will soon be on and the stamp and stationery trade should be well prepared by laying in full stocks of goods. Don't be caught napping. There is liable to be another rise in stamp supplies very soon. The rubber men are preparing to get there very soon. Write to the Traun Rubber Company, New York, and arrange your advanced purchases before the prices advance. Crude rubber wil go up again very soon. .

Progressive houses like that of The R. H. Smith Mfg. Co., Springfield, Mass., are drawing the attention of the trade in unusual measure. This company are changing their ads. frequently to set forth their very great variety of stamp goods in a taking way. The Journal Company are glad to see this tendency. It helps to make the Journal interesting and at the same time helps the advertiser more. The Smith Company are certainly on deck and doing a good business. Read their new ad. this month.

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NEXT ITEM

of the labels, it is found each in three places distinctly states the product to be a compound of molasses and corn syrup.

As shown from the evidence, this compound contains no substance deleterious or injurious to the health; and, as it further appears from the evidence, under the practice of the department, commercial glucose may be properly labeled and sold under the name of "corn syrup," we are of the opinion there is nothing in the manner in which the cases of molasses involved in this controversy were labeled that is false or untrue, or which would tend to mislead or deceive a purchaser of ordinary prudence, and there is no eidence found in the record tending to show any one was so deceived or misled by the labels employed.

The authorities relied upon by the government to make out the charge of false branding, as shown by an examination, are cases in which it was determined the labels contained false statements as to the contents of the receptacle labeled. Such cases, for the reasons given, are not applicable to the facts in the case at bar.

The direction of the court to return a verdict in favor of the claimant was right, and must be affirmed.

It is so ordered.

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BATES MFG. CO. v. BATES NUMBERING MACH. CO.

(Circuit Court, D. New Jersey. September 25, 1909.)

712 Fed. 892.

1. Trade-Marks and Trade-Names—Unlawful Competition—Fraud—Deception of Public.

In a suit to restrain unlawful competition, equity does not concern itself with the means. If the result is fraudulent, and the public are induced thereby to purchase the goods of one under the belief that they are those of another, the means will be enjoined.

2. Trade-Marks and Trade-Names—"Unfair Competition"—Elements.

Unfair competition does not necessarily involve the violation of any exclusive right to the use of a word, mark, or symbol as it may arise from the use of words, etc., which everybody may use; the test being whether what has been done tends to pass off the goods of one for those of another, or to deprive such other of his rights.

3. Trade-Marks and Trade-Names—Unlawful Competition—Use of Corporate Name.

From 1891 to 1902 complainant alone made and sold a "Bates Automatic Hand Numbering Machine," having a consecutive duplicate and repeat movement, during all of which time and for several years thereafter it extensively and exclusively advertised the machine as "The Bates Numbering Machine," so that the purchasing public understood such name to exclusively designate complainant's machines. Bates, the patentee, under whose patents the machine was manufactured, severed his connection with complainant in 1895, afterwards organizing a corporation under the name "Bates Machine Company." In 1902 defendant under that name began manufacturing computing machines then designated as "Model No. 49" and "Model No. 50." In 1908 complainant obtained an injunction restraining defendant from putting out hand numbering machines in boxes bearing labels in imitation of those appearing on complainant's machine, whereupon defendant in 1909 changed its name to the "Bates Numbering Machine Company," and referred to its computing machines not by model numbers, but as "Bates Numbering Machines," in its advertising, etc. Held, that such use of the word "Bates" in connection with numbering machines constituted unlawful competition, and that complainant was entitled to injunction restraining defendant's use of the words "Bates Numbering Machine Company" as its corporate name, and from using any

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other words resembling "Bates Numbering Machines," the effect of which would be to mislead the public to believe that defendant's machines were those manufactured by complainant.

In Equity. Suit by the Bates Manufacturing Company against the Bates Numbering Machine Company to restrain an alleged unfair competition in trade. On motion for preliminary injunction. Heard on bill, with supporting affidavits. Granted.

See, also, 141 Fed. 213.

The complainant seeks to enjoin the defendant from the use of its corporate name, "Bates Numbering Machine Company," and from using the expression "Bates Numbering Machine," in connection with the sale of automatic hand numbering machines not of the complainant's make, and from filling orders calling for a "Bates Numbering Machine" with a machine other than that of the complainant, and from seeking to induce prospective purchasers to change orders, proposals, and awards calling for a "Bates Numbering Machine" so as to describe or specify a machine other than that of the complainant. The bill charges that the defendant changed its name from the "Bates Machine Company" to the "Bates Numbering Machine Company" fraudulently for the purpose of deceiving the public, and to obtain the benefit of complainant's advertisement and business reputation, and to identify itself and its business with that of complainant, and to palm off its goods as that of tne complainant; that the defendant has ever since such change of name been offering and advertising for sale its automatic hand numbering machines under the trade-name and designation "Bates Numbering Machines," and has used and is using its corporate name "Bates Numbering Machine Company," and has and is wording its advertisements in such a way as to make it deceptively appear that the defendant is selling and offering for sale complainant's genuine "Bates Numbering Machines," and has sold and is selling its said numbering machines as those of complainant's manufacture, and that it has by the use of its corporate name and the said trade-name "Bates Numbering Machine" in its advertisements, etc., induced such purchasers to purchase defendant's automatic hand numbering machines as and for the machines of the complainant's manufacture, which such purchasers desired, and would have purchased from complainant had they not been deceived by the defendant's said fraudulent acts, with the result that the public has been deceived and complainant injured in its business. The bill thereupon prays that the defendant be perpetually enjoined from any further use of the word "Bates Numbering Machine Company" as its corporate name, or of any other words of such corporate name as would sufficiently resemble complainant's trade-name "Bates Numbering Machine," as to be likely to deceive or mislead the public into believing that the defendant's automatic hand numbering machine was complainant's product, and from employing or using the expression "Bates Numbering Machine" in connection with its sales of any automatic hand numbering machines not of complainant's make, or in connection with the offering or advertising the sale thereof, and from filling any orders for "Bates Numbering Machines" with any other than complainant's machines, and from seeking to induct prospective purchasers to change orders, proposals, and awards calling for "Bates Numbering Machines" so as to describe or specify a machine other than that of the complainant, and for a provisional injunction to like effect during the pendency of the suit.

The following statement of facts found from such affidavits is necessary for a proper understanding of the questions raised:

Both complainant and defendant are corporations. The former was organ-

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ized in 1890 under the laws of the State of New York, the latter in 1899 under the laws of the State of New Jersey. Both parties have from the time of their respective incorporations been engaged in the manufacture of various kinds of numbering machines designed by Edwin G. Bates, whose surname was used in the corporate title of each of these corporations. He was the patentee of these numbering devices, and an incorporator and stockholder of each of said corporations, but not at the same time. He severed his connection with the complainant about the year 1895, selling his stock holdings in that company, and began the business of manufacturing and selling hand numbering machines on his own account, carrying on the business for a short time in his own name, then using the name "Bates Machine Company." Subsequently the corporation of that name was organized, and the business enlarged and continued in that name until the change of name hereafter referred to. The complainant about the year 1891, began the manufacture and sale of an automatic hand numbering machine, capable of printing in consecutive order from one to any number having no more than seven digits, and of duplicating, triplicating, and quadruplicating any particular number, before advancing automatically to the next higher number, and, by the use of an adjustment, of repeating any of such numbers as many times as desired. That to each of such machines a name plate was affixed, bearing complainant's name and the words "Bates Automatic Numbering Machines" as a trade-mark. That in the year 1891 or 1892 complainant began, and ever since has continued, to advertise said machines in various publications and trade journals published in the United States, designating said machines as "Bates Numbering Machines," and has at all times in selling said machines applied thereto the words "Bates Automatic Numbering Machines," and designated the same in its advertisements by the trade-name "Bates Numbering Machine." That as a result of complainant's skill and enterprise in advertising said machines, and their satisfactory character, it obtained an extensive and lucrative business in said machines, and the name "Bates Numbering Machine" became widely and favorably known in connection therewith throughout the United States, and became associated and identified with the automatic hand numbering machine of complainant's manufacture, and with such machines only, in the minds of the public and the trade generally. That from the defendant's incorporation until 1902 or 1904 (the exact year being in dispute) numbering machines manufactured and sold by it were of a different character and served a different use from those manufactured by complainant. That about 1902 the defendant for the first time manufactured and sold an automatic hand numbering machine having consecutive, duplicate, and repeat movement, which came into direct competition with the complainant's said machine, and which the defendant catalogued as its model No. 49. That in the year following it placed another similar machine on the market, cataloguing it as Model No. 50. That each of said type of machine had a plate affixed thereto, describing it by model number and name and adress of defendant. That on the 31st of July, 1905, complainant filed its bill in this court against the defendant "The Bates Machine Company," praying that it be enjoined from using the name "Bates" on any hand numbering machine or on the package containing the same, or in any way connected with the sale or offering for sale thereof, or in any way whatsoever calculated to deceive the public, and from imitating the labels appearing on the boxes in which the complainant's numbering machines were packed. That as a result of the proceedings had in such cause said defendant by a decree of this court dated September 28,

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1908, was enjoined from putting out automatic hand numbering machines in boxes bearing labels in imitation of the labels appearing on the boxes in which complainant's machines were packed.

That subsequently, to wit, on or about the 15th day of January, 1909, defendant changed its name to the "Bates Numbering Machine Company." That prior to this change of name the automatic hand numbering machines manufactured by defendants, which came in competition with complainant's machines, were known by the trade as Model No. 49 and No. 50, and not as "Bates Numbering Machines," and were not described as "Bates Numbering Machines" in defendant's advertisements, but as models No. ——— (the appropriate letter or number following), but that subsequently thereto they were referred to as the "Bates Numbering Machines." That since, and by reason of such change of name, and the advertising of the defendant's machines as "Bates Numbering Machines," confusion has arisen in the trade as to the identity of these corporations; some of the trade addressing the one to the other's place of business under the impression that they were one and the same party. Several customers of the complainant gave orders to the defendant for its machines under the belief that they were giving such orders to the complainant for its machines.

Delos Holden (Melville Church, of counsel), for complainant.

John W. Queen, for defendant.

Rellstab, District Judge (after stating the facts as above). Without attempting to define what under the adjudicated cases will be enjoined as unfair in business competition, some of which will presently be cited, it may be said for present purposes that equity does not concern itself as to what the means, how, or with what intent they are used, if the result is fraud, and, if the public are induced thereby to purchase the goods of one under the belief that they are those of another, such means will be enjoined.

In Ludlow Valve Mfg. Co. v. Pittsburg Mfg. Co. (C. C. A.) 166 Fed. 26-29, it was said:

"No arbitrary rules have ever been, nor ever can be, laid down by which courts of equity will furnish this protection. To establish such rules would, like definitions in the law, furnish the means by which fraud could successfully accomplish its ends."

In Howe Scale Co. v. Wyckoff et al., 198 U. S. 118, 25 Sup. Ct. 609, 49 L. Ed. 972, it was held that:

"The essence of the wrong in unfair competition consists in the sale of the goods of one person for that of another, and, if defendant is not attempting to palm off its goods as those of complainant, the action fails."

"Every man has a right to use his name reasonably and honestly in every way, whether in a firm or corporation, and it is only dishonesty in the use of the name this is condemned."

The following from Nims on Unfair Business Competition, supported by the cases cited by him, are helpful in deciding this case:

Unfair competition does not necessarily involve the violation of any exclusive right to the use of a word, mark, or symbol. It may arise from the use of words, etc., which everybody may use. The question is whether what was done in a special case tends to pass off the goods of one for those of another, or tends to deprive such other of his rights. If a name purely generic or descriptive or indicative of general qualities such as any one may use has by long association with goods of one person come to mean to the public his goods alone, and not such goods in general, other persons will be prohibited from using it. Pages 8 and 9.

"A trade-name may be either the name of the manufacturer of goods, or some name by which the manufactured goods have become generally

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known. There is a kind of property in such a name, and interference with it will be restrained by the court if there is a prospect of injury to the owner of it." Pages 22 and 23.

Rival manufacturers have no right by imitative devices to beguile the public into buying their wares under the impression that they are buying those of their rivals. Page 25.

A name may be so appropriated by user as to come to mean the goods of the plaintiff. Where such is the case, "the use of that name or one so nearly resembling it as to be likely to deceive as applicable to goods not plaintiff's may be the means of passing off those goods as and for the plaintiff's just as much as the use of a trademark." Pages 27 and 28.

"When one has established a trade or business in which he has used a particular name so that it has become known in trade as a designation of such person's goods, equity will protect him in the use thereof." Page 34.

Out of this difficulty which the courts have found in preserving this right which every man has to use his own name, and at the same time preventing injury and fraud arising from the exercise of that right, the doctrine of secondary meaning has been evolved. Words which form a part of the common stock of the language may become so thoroughly identified with some one person's business or goods that it is quite possible that the use of them alone without any qualifying words or other explanation by another manufacturer would deceive buyers into believing that there was but one concern or one brand of goods instead of two. Page 138.

On the same principle that one must not pass off his goods as those of another, he must not use his trade-name in such a way as to give the impression that it is the trade-name of another. Page 164.

A corporate name is chosen by the incorporators themselves, and, as they can make it what they will, their rights arising from its possession are less important and their responsibility for its use is greater than in the case of their own personal name. Page 197.

"No name may be chosen in naming a corporation which will cause the new corporation to be passed off as some other company already in existence, or that will, when attached to the goods made by the new company, pass those goods off as the goods of some other company." Page 206.

Applying the foregoing principles of law to the facts in this case, the solution is not difficult. From 1891 to 1902 or 1904 (the year being in dispute) complainant alone made and sold a "Bates Automatic Hand Numbering Machine," having a consecutive, duplicate, and repeat movement. During all this time, and for several years after, it extensively and exclusively advertised this machine as the "Bates Numbering Machine," and the purchasing public understood that such trade-name exclusively designated complainant's machine. This machine distinctly filling a trade want, the complainant obtained a large and lucrative business in dealing therein. About the year 1902 defendant, then named "Bates Machine Company," began the manufacture and sale of an automatic hand numbering machine, with like movements, and accomplishing the same purpose as that of the complainant. At first is made but one kind of such machine, which it designated as Model No. 49, soon following it, however, with another which it designated as Model No. 50. In cataloguing, marking, and advertising such machines they were not designated as "Bates Numbering Machines," but as "Automatic Hand Numbering Machines Model No. 49 or 50." The name of the defendant "Bates Machine Company" as the manufacturer of such machines appeared with such marking, publication, and advertising. This designation in marking and advertising defendant's machines continued until after it changed its name,

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which took place on January 15, 1909. The course of the defendant up to this date was perfectly proper and legal. It had a right to put upon the market an automatic hand numbering machine in direct competition with the complainant, even to an exact duplication of its mechanism, if it did not infringe upon its patent rights. No such infringement is alleged. Its method and character of advertisement were unobjectionable. Nothing therein would suggest an attempt to trade on the reputation of an older competitor. Every ordinary intelligent person would see at once that a new competitor had entered the market.

A new condition of things took place, however, with the change of name and the change in the wording of the advertisement of such machines. Neither the "Bates Machine Company" as the name of the defendant, nor the advertisement of its machines as "Model No. 49 or 50," as manufactured by it, could be confused with the name of the complainant or the trade-name of its product, viz., "Bates Numbering Machine." But not so when it changed its name to the "Bates Numbering Machine Company," and began to advertise its machines by the same name as theretofore exclusively used to designate and advertise the machines of the complainant, and which name had then become firmly fixed in the mind of the trade and purchasing public as associated with the complainant's product. Not only confusion, but deception, was the necessary result of such conduct. A trade-name is usually more striking than the name of its user. It is likely to give more information about the product and calculated to make a more lasting impression on the mind than a mere trade-mark. Where such trade-name of the product is dissimilar to that of the manufacturer, it is likely to be remembered, even though the name of the person entitled thereto is overlooked or forgotten. Faulder & Co., Ltd. v. O. & G. Rushton, Ltd., 20 R. P. C. 477. In such a case such trade-name obtains a secondary meaning, even though in its primary sense it is not subject to the exclusive ownership of the trader.

In the recent case of Lowe Bros. Co. v. Toledo Varnish Co. (C. C. A.) 168 Fed. 627, it was held:

"The words 'High Standard' as applied to paints or varnishes are in themselves descriptive of quality, and cannot be monopolized as a trademark, but, where they have been used for a number of years by one manufacturer exclusively for a trademark, and have thereby acquired a secondary meaning with the trade and public as designating and identifying the products of such maker, their use by another in connection with similar goods in a way which may probably deceive purchasers will be enjoined as unfair and fraudulent competition."

The instances of confusion and deception shown in complainant's affidavits are but the natural consequences of the change of defendant's name and the changed wording of its advertisements. A glance at defendant's advertisements appearing in the April (1909) numbers of the magazines "System" and "Office Appliances" will convince of this. The headlines to both of these advertisements, "23 Cents Puts a Bates Numbering Machine on Your Desk," is the most prominent part thereof. It is not only displayed in larger and heavier type, but so blocked out as to make it the most striking to the eye. Without the advertiser's name and address, the trade would accept the whole as describing and advertising the complainant's machine. If the defendant's name were not so completely identified with the trade-name of the goods advertised, both a deception of the public and the diversion of the complainant's business would be the likely consequences; but with the changed name of the defendant nothing else could reasonably be looked for. The street or factory address

added to defendant's name would not be likely to change such result. The reason for this is obvious, as between the flaring headlines proclaiming the trade-name and the name and address of the advertiser, the latter plays a minor part in the impression made on the mind of the reader. The jobber, because of his more frequent purchases, might readily see that a different concern was advertising, but not so the ultimate purchaser. To the latter the trade-name is associated with the reputation of the product rather than the name of the manufacturer. Lured by the advertisement of this old trade-name he would be as likely to send the order to the advertiser as to the rightful owner of such trade-name under the belief that he was dealing with the latter. The reprehensible purpose evidenced by this method of advertising is at least as striking as that condemned in Ludlow Valve Mfg. Co. v. Pittsburgh Mfg. Co. (C. C. A.) 166 Fed. 30.

The logical, and perhaps desired, result of such conduct on the part of the defendant is, first, a deceiving of purchasers into giving it their custom under the belief that they were dealing with the same parties whose goods had become favorably known under such trade term; and, second, the gradual appropriation to itself of the favorable reputation which the complainant had built up for its own goods through years of toil and at considerable expense. In this case the facts in the particulars that control the decision are similar to those in Wm Rogers Mfg. Co. v. R. W. Rogers Co. (C. C.) 66 Fed. 56, affirmed R. W. Rogers Co. v. Wm. Rogers Mfg. Co., 70 Fed. 1017, 17 C. C. A. 576; Garrett et al v. T. H. Garrett & Co., 78 Fed. 472, 24 C. C. A. 173; L. & P. Coates, Ltd., v. John Coates Thread Co. (C. C.) 135 Fed. 177; Charles S. Higgins Co. v. Higgins Soap Co., 144 N. Y. 462, 39 N. E. 490, 27 L. R. A. 42, 43 Am. St. Rep. 769; F. E. De Long v. De Long Hook & Eye Co., 89 Hun, 399, 35 N. Y. Supp. 509; Dodge Stationery Co. v. Dodge, 145 Cal. 380, 78 Pac. 879; Bissell Chilled Plow Works v. T. M. Bissell Plow Co. (C. C.) 121 Fed. 357; Lamb Knit Goods Co. v. Lamb Glove & Mitten Co., 120 Mich. 159, 78 N. W. 1072, 44 L. R. A. 841; International Silver Co. v. Wm. H. Rogers Corp., 67 N. J. Eq. 646, 60 Atl. 187, 110 Am. St. Rep. 506; North Cheshire & Manchester Brewing Co. v. Manchester Brewing Co. (1899) App. Cases, 83, in which the use of the corporate title was enjoined. To the same effect, see, also, Clark Thread Co. v. Armitage, 74 Fed. 936, 21, C, C, A. 178.

In my opinion the complainant has shown a clear case of unfair competition; and, in view of the former finding by this court that the defendant was guilty of unfair competition towards this complainant in imitating its labels, immediate, even though drastic, relief should be afforded. A preliminary injunction is granted restraining the defendant from any further use of the words "Bates Numbering Machine Company" as its corporate name, or as such corporate name any other words which sufficiently resemble the said trade-name of the complainant's product, to wit, "Bates Numbering Machine," as to be likely to mislead or deceive the public into thinking or believing that the automatic hand numbering machines put out by the defendant are the product of the complainant, and from employing or using the expression "Bates Numbering Machine" in connection with the sales of any automatic hand numbering machines not of the complainant's make, or in connection with the offering or advertising for sale thereof, and further restraining the defendant from filling any orders or awards calling for a "Bates Numbering Machine" with a machine or machines of other make than that of complainant, or from seeking to induce prospective purchasers to change orders, proposals, and awards calling for a "Bates Numbering Machine," so as to describe or

specify a machine or machines of other make than that of the complainant, without at the same time clearly and unmistakably informing such purchaser that the machines made by the defendant are not those made by the "Bates Manufacturing Company," and that such company and not the defendant began to advertise, and for many years exclusively advertised, said machines by the trade-name "Bates Numbering Machine."

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CAPEWELL HORSE NAIL CO. v. MOONEY.

(Circuit Court of Appeals, Second Circuit. August 20, 1909.)

172 Fed. 826.

1. Trade-Marks and Trade-Names—Registration of Mark—Common-Law Trade-Mark.

In a suit for infringement of a trade-mark, objection to the validity of complainant's registration of the mark was not material where complainant had a common-law trade-mark in the device alleged to have been infringed.

2. Trade-Marks and Trade-Names—Infringement—Unfair Competition.

Infringement of complainant's trade-mark on horseshoe nails to simulate complainant's nails, and produce confusion in the minds of dealers and users, was unfair competition.

3. Courts—Jurisdiction — Infringement of Trade-Mark.

A bill may be maintained in the federal Circuit Court to restrain the infringement of a common-law trade-mark where other jurisdictional facts are present.

4. Trade-Marks and Trade-Names—Character of Marks—Ornamentation.

That a trade-mark, consisting of a check figure formed by intersecting lines impressed on the bevel face beneath the edge of horseshoe nails, was an ornamental device which added to the appearance of the nails, and also came to represent quality, did not prevent it from operating as a valid trade-mark.

5. Trade-Marks and Trade-Names—Infringement — Necessity — Horse Nails.

It was no defense to a suit to restrain the infringement of plaintiff's trade-mark consisting of a check figure formed of intersecting lines impressed on the bevel face beneath the heads of horseshoe nails that such mark was produced while the nail was passing through one of the rolls of the manufacturing machinery by which the nail was gripped and held in place; it not appearing that the pattern of the gripping surface of the roll was required to be the same as the trade-mark stamped on complainant's nails in order to their successful manufacture.

Appeal from the Circuit Court of the United States for the Northern District of New York.

Suit by the Capewell Horse Nail Company against Walworth M. Mooney. From a decree (167 Fed. 575) for complainant, defendant appeals. Affirmed.

This cause comes here upon appeal from a decree of the Circuit Court, Northern District of New York, enjoining defendant from making, using, or selling or offering for sale horse nails bearing the trade-mark of complainant such as have been heretofore made and sold by defendant or bearing any mark so similar to complainant's trade-mark as to be likely to deceive purchasers and the public.

The opinion of the Circuit Court is reported in 167 Fed. 575.

Robert W. Hardie, for appellant.

Edmund Wetmore and Oscar W. Jeffery, for appellee.

Before Lacombe, Coxe, and Noyes, Circuit Judges.

Lacombe, Circuit Judge. The mark consists of a pattern of small checks, formed by lines crossing each other diagonally, stamped upon the under or bevelled side or front face of the head of the horseshoe nails and substantially covering the surface of that

constitutes a valid technical trade-mark. In the cases in re Hopkins (128 O. G., 890; 29 App. D. C., 118) and in re Crescent Typewriter Supply Co. (133 O. G., 30 App. D. C., 324) The Court of Appeals fo the District of Columbia held that the words, "Oriental" and "Orient" were not registrable as technical trade-marks, notwithstanding the fact that they were associated with arbitrary matter. The action of the Examiner refusing registration was clearly right.

The decision of the Examiner is affirmed.

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REGULATION OF TRADING STAMP COMPANIES.

The issuing and redemption of trading stamps as carried on by defendant in the case of State v. Sperry-Hutchinson Co., 126 Northwestern Reporter, 120, is not, in the opinion of the Supreme Court of Minnesota, attended with such elements of chance, uncertainty, and contingency as to justify a statute requiring each stamp to be valued and redeemed independently of other stamps, and have printed thereon its value and character of the article offered for redemption, such restrictions being unnecessary, an improper exercise of the police power of regulation, and a practical prohibition of the business. Judge Jaggard in his dissenting opinion says: "I am unable to perceive why the statute should not be upheld. In effect it regards the defendant as a commercial parasite and prohibits existence. The facts justify that definition and prohibition."

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Pecularities in printing cannot make a word registerable as a technical trade-mark that would be otherwise unregistrable because descriptive of the goods to which it is applied.—H. W. Johns-Manville Co. v. American Steam Packing Co., 33 App. D. C. 224.

Leading American Trade-Mark Cases

BATES NUMBERING MACHINE CO. v. BATES MFG. CO

(Circuit Court of Appeals, Third Circuit. April 23, 1910.)

178 Fed. Rep. 681

1. Trade-Marks and Trade-Names—Infringement—Use of Trade-Name.

An order affirmed, granting a preliminary injunction restraining defendant, the "Bates Numbering Machine Company," from using such corporate name, or the words "Bates Numbering Machine," which has been for eighteen years the trade-name of complainant's product, in connection with machines of any other make.

Appeal from the Circuit Court of the United States for the District of New Jersey.

Suit in equity by the Bates Manufacturing Company against the Bates Numbering Machine Company. Defendant appeals from an order granting a preliminary injunction (172 Fed. 892). Modified and affirmed.

Robert B. Honeyman for appellant..

Delos Holden and Melville Church, for appellee.

Before Buffington and Lanning, Circuit Judges, and Archbald, District Judge.

Lanning, Circuit Judge. This is an appeal from an interlocutory order of the Circuit Court granting a preliminary injunction against the defendant, the Bates Numbering Machine Company. The order is:

"That a preliminary injunction be issued, out of and under the seal of this court, strictly enjoining and restraining the defendant, the Bates Numbering Machine Company, its officers, attorneys, agents, servants, and employes, until the further order of the court herein, from any further

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use of the words, 'Bates Numbering Machine Company' as its corporate name, or as such corporate name, any other words which sufficiently resemble the trade-name of the complainant's product, to wit, 'Bates Numbering Machines.' as to be likely to mislead or deceive the public into thinking or believing that the automatic hand numbering machines put out by the defendant are the product of the complainant; and from employing or using the expression 'Bates Numbering Machine' in connection with the sales of any automatic hand numbering machines not of the complainants make, or in connection with the offering or advertising for sale thereof, and further enjoining and restraining the defendant from filling any orders or awards calling for a 'Bates Numbering Machine' with a machine or machines of other make than that of the complainant, or from seeking to induce prospective purchasers to change orders, proposals, and awards in calling for a "Bates Numbering Machine' so as to describe or specify a machine or machines of other make from that of the complainant, without at the same time clearly and unmistakably informing such purchasers that the machines made by the defendant are not those made by the Bates Manufacturing Company, and that such company, and not the defendant, began to advertise and for many years exclusively advertised said machines by the trade-name 'Bates Numbering Machine.'"

The record of the case shows that ever snice 1892 the complainant, the appellee here, has been putting on the market what have been known as "Bates Numbering Machines." On September 28, 1908, a permanent injunction, following the preliminary injunction allowed in accordance with the opinion in 141 Fed. 213, was awarded against the present defendant at the suit of the present complainant, enjoining the defendant from using labels simulating those of the complainant. The right of the defendant to use the name "Bates Numbering Machines" was not adjudicated in that case. On January 15, 1909, the defendant changed its corporate name from "Bates Machine Company" to "Bates Numbering Machine Company." Confusion seems to have arisen. The facts disclosed by the affidavits seem to show, moreover, an intent on the part of the defendant to appropriate the trade-name "Bates Numbering Machine." by which the complainants product has so long been known. After a careful review of the facts , Judge Rellstab reached the conclusion that the order complained of should be made. See his opinion, 172 Fed. 892.

Without in any wise prejudging the case as it may appear on final hearing, we think the order should stand, except that the last clause, "and that such company, and not the defendant began to advertise and for many years exclusively advertised said machines by the trade-name, 'Bates Numbering Machine,' should be stricken out.

As thus modified, the order is affirmed, with costs to the appellee.

MICHIGAN SAVINGS BANK v. DIME SAVINGS BANK.

(Supreme Court of Michigan. July 14, 1910.)

127 N. W. Rep. 364.

1. Corporations—Names—Similarity.

Comp. Laws, section 6091, requires persons associating to organize a bank to specify in the articles of association the name assumed by such bank, which shall not be similar to that of any other bank organized under the state law. Pub. Laws 1903, No. 232, section 2, forbids a corporation assuming the same or a similar name to that of another corporation doing business in the state. Held that in applying the statutes as a preventive measure, in advance of the assumption of alleged similar names, and in a case where

NEXT ITEM

The Bates Manufacturing Co.

of Orange, N. J.

Manufacturers of the ORIGINAL and ONLY Bates Automatic Hand Numbering Machine

obtain an injunction against The Bates Numbering Machine Company of Brooklyn for unfair and misleading competition.

Dealers are warned against selling, as BATES NUMBERING MACHINES, AUTOMATIC HAND NUMBERING MACHINES not manufactured by the BATES MANUFACTURING CO., ORANGE, N. J.

THE UNITED STATES CIRCUIT COURT for the District of New Jersey, at a session held at Trenton, N. J., on October 2, 1909, issued a peremptory injunction restraining the defendant from any further use of the words BATES NUMBERING MACHINE COMPANY as its corporate name, and from using the expression BATES NUMBERING MACHINE in connection with the sales of any automatic hand numbering machines not of our make, or in connection with the offering or advertising for sale of such machine.

The injunction is sweeping in character. It insures protection to the public and to ourselves. Henceforth the public can be assured that automatic hand numbering machines offered for sale as BATES NUMBERING MACHINES or BATES AUTOMATIC NUMBERING MACHINES are the genuine product, to the perfection of which we have given many years of intelligent, patient effort. If our machine were not of high quality and efficiency, it would not be imitated —failures do not breed voluntary imitation. If the words, BATES NUMBERING MACHINE did not signify the perfection of mechanical excellence in the eyes of the public—if they were not representative of honesty and merit, the infringement would never have resulted and it would never have been necessary to issue the injunction, of which the following is a copy:—

THE PRESIDENT OF THE UNITED STATES OF AMERICA
TO
(L. S.) BATES NUMBERING MACHINE COMPANY, its officers, attorneys, agents, servants and employees, and each and every of them, GREETING:

WHEREAS, In a certain action brought in our United States Circuit Court for the District of New Jersey by the Bates Manufacturing Company as complainant against you, Bates Numbering Machine Company, as defendant, it was ordered that a preliminary injunction should issue against you, the said Bates Numbering Machine Company;

Now, THEREFORE, We do strictly command and enjoin you, the said Bates Numbering Machine Company, your officers, attorneys, agents, servants and employees, and each and every of you, under the penalties that may fall on you in case of disobedience, that you forthwith and until the further order of this Court, desist from any further use of the words "Bates Numbering Machine Company" as your corporate name or as such corporate name any other words which sufficiently resemble the trade name of the complainant's product, to wit: "Bates Numbering Machine," as to be likely to mislead or deceive the public into thinking or believing that the automatic hand numbering machines put out by you are the product of the complainant, and from employing or using the expression "Bates Numbering Machine" in connection with the sales of any automatic hand numbering machine not of the complainant's make, or in connection with the offering or advertising for sale thereof, and that you further desist from filling any orders or awards calling for a "Bates Numbering Machine" with a machine or machines of other make than that of the complainant or from seeking to induce prospective purchasers to change orders, proposals and awards calling for a "Bates Numbering Machine" so as to describe or specify a machine or machines of other make from that of the complainant, without at the same time clearly and unmistakably informing such purchaser that the machines made by you are not those made by the "Bates Manufacturing Company," and that such company and not you began to advertise and for many years exclusively advertised said machines by the trade name, "Bates Numbering Machine."

WITNESS the Honorable Melville W. Fuller, Chief Justice of the United States, at the City of Trenton, this fifth day of October, in the year of our Lord one thousand nine hundred and nine.

H. D. OLIPHANT, *Clerk.*

DELOS HOLDEN, ESQ., *Solicitor for Complainant.*

We object to no competition that is fair. We do object to any concern trading upon our name and reputation and endeavoring to make the public believe that it is buying genuine Bates Numbering Machines when they are not made by us.

A Complete Copy of this decision will be mailed to anyone on request

BATES MANUFACTURING CO., ORANGE, N. J.

New York Office, 10 Fifth Avenue

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an angel with a piece of holly in its hand, a gold horseshoe and mistletoe made of a patented composition and standing out boldly from the surface of the card.

In another series of eleven styles retailing at 10 cents there are a number of floral designs, mistletoe, holly, combined with various objects typical of the day like Christmas bells and good made horseshoes.

POST CARD ALBUMS.

Post card albums of handsome appearance are being shown in the salesrooms of A. L. Salomon & Co., 345 Broadway, New York. The covers range from buffs to browns in delicate shades, and the prices at retail run from 10 cents to $3.50. Many of them have designs in holly, showing both the berries and leaves in natural colors. A number of the designs are embossed. Other covers are made of linen. Some of these are heavily embossed with birds colored to the life. The birds are almost lifelike. The line is very extensive, containing 92 numbers.

METAL DOGS.

Dogs in metal and measuring only about two inches in height are being sold by A. L. Salomon & Co., 345 Broadway, New York, for decorative purposes. The animals form a set, making a dog band. Each one stands on his hind legs and holds some musical instrument. One dog plays a cornet, another a trombone, the cymbals, a flute. A lifelike appearance is given to the images by a spring on which the heads are pivoted to move at the slightest touch. They sell at 15 cents retail and cost the trade $1 per dozen.

PLUSH GREETING CARDS.

Greeting cards of plush are a novelty taking with the trade. The background of each card is soft and velvety, and is illustrated with pictures of Christmas time, snowy roofs and windows opened on Christmas morning. In relief against the plush are lamp posts and telephone poles, to suggest messages appropriate to the season. The goods are on sale at the annex of the Tower Manufacturing and Novelty Company, at Leonard street, New York.

GIFT CONTAINER.

Added to a long line of Christmas novelties which the Dennison Manufacturing Co., Boston, New York, Chicago, and St. Louis, is showing this year is the Gift Container. This article is made to hold handkerchiefs, gold coin, gloves and other Christmas gifts. Those meant for handkerchiefs are decorated with holly and a picture of Santa Claus is printed with words appropriate to the season. It makes an excellent Christmas package for either mailing or placing under the family tree the night before Cris Cringle comes down the chimney. The other holders for gloves, money gifts, etc. are all made of heavy crepe paper and printed with rich colors.

TOYLAND POST OFFICE.

Toy Town Post Office is a winning novelty for this season. It consists of a post office made of card board folded and lithographed in colors which has all the appurtenances of a regular postal establishment. There are envelopes and not papers, mail bag, stamp pad and lead pencils, drops for the letters, and supplies of stamps printed in different colors. The outfits come in three sizes and sell for $1, 50 cents and 25 cents, and should prove excellent sellers, for they will take well with both girls and boys. The Milton Bradley Co., Springfield, Mass., makes the Toy Town Post Office for the trade.

SAFETY RAZOR.

The well-known Gillette safety razor is now being made in a "pocket edition." The blade is the same size as in the old Gillette, but the whole article takes up less space and is more compact. This latest number is so thin that the case and all can be slipped into the vest pocket or into the side of a traveling bag. The American News Company, 9-15 Park Place, New York, is handling this size Gillette for the trade.

1909 11 13 - The American Stationer p723 BatesMachineCo .png


NEXT ITEM

Legal Phases of Retail Business

In this department THE AMERICAN STATIONER will present a series of carefully prepared articles of the utmost value to the retail stationers of the United States. These articles are duly copyrighted, and any one of them should be worth more than the price of a year's subscription to THE AMERICAN STATIONER to any wide-awake member of the trade. As they may not be required for immediate use subscribers who do not permanently preserve their files of THE AMERICAN STATIONER should cut out these articles and carefully file them away for ready reference in case of future need. By doing this they may save themselves many dollars.

XI.—Damage Suits Against Merchants for Injuries Received on the Premises.

By Elton J. Buckley.

Copyright, 1909.

A common type of civil action is that brought against retail dealers by customers or visitors who claim to have received some injury or damage while upon the dealers' premises through some negligence by him or his employees. I have been consulted many times on cases of this class and have seen hundreds of them come up in the courts for trial with varying results.

The rule which governs the liability of a dealer in such cases is simple and easily stated: He is a public storekeeper and invites the general public to come upon his premises. Any person, therefore, who is upon the premises by this invitation and who is injured by any cause for which the dealer can be held responsible through negligence, can cover all damages which he has sustained.

The rule is otherwise with a person who is not upon the premises by the express or implied invitation of the proprietor. He is considered in a sense a trespasser and only the most reckless or wanton negligence will in such a case make the proprietor responsible for injury sustained. I will try to make plain the distinction between persons on the premises by invitation and those not on in that way.

When I say by the invitation of the proprietor I do not mean an actual expressed invitation, but the invitation which the very act of keeping a store creates. The opening of a store and the offering of goods for sale is itself a direct invitation to come upon the premises. This is all the invitation which the law requires shall have been made.

Whether a person who is injured is actually upon the premises by invitation is a question of fact. Any person who went there for the purpose of buying goods would be. So would any person who went there, during proper hours, for the purpose of selling goods.

Both propositions require some qualifications, however. Take the case of a person who went into a store to buy goods. While in the store he wanders into a back room used for storing goods, or for any other purpose outside the sale and display of merchandise—a room where customers are not supposed to go and where they have no need to go.

He falls down a hatchway and is injured, or falls over a box and breaks a leg; or is injured in any other similar way. No action can be successfully brought against the proprietor, the reason being that the injured person is not upon that part of the premises in which he is injured by invitation.

If, however, the cause of such person's injuries was some wanton act of carelessness, the owner could be held responsible, even though such person was a trespasser, but the negligent act would have to be wanton indeed.

Take also the case of a salesman who goes into a store to sell goods. He has been there before for the same purpose, as have other salesmen, and the dealer does all his buying there. The latter, however, has conspicuously posted a sign in the front of his store and has also informed the salesman by word of mouth that he will do no buying except between 1 and 3 o'clock in the afternoon. A salesman in full knowledge of this goes in at 10 o'clock in the morning to sell goods and is injured. I am extremely clear that in this case also no ordinary liability for negligence would rest upon the dealer, for the salesman was not on the premises by invitation. On the contrary, he has been distinctly told not to come. Only when his injuries arose through the most reckless negligence could he hold the dealer liable.

So in the case with a canvasser or solicitor who goes into a store to sell something in defiance of a sign. "No canvassers, solicitors or peddlers allowed on these premises." If he is injured his status is that of a plain trespasser.

The question arises, what sort of negligence will render a storekeeper liable to an injured person who was in his store by invitation? This negligence takes innumerable forms. If he leaves a protruding nail somewhere and a customer tears his clothing upon it. Or if he leaves something slippery on his floor and a customer falls on it and is injured. Or if some boxes or cases, insecurely piled, topple and fall on a customer, injuring him. As stated, forms of this type of negligence are without number—any careless, negligent act of commission or omission done by the dealer himself or his clerks will render him liable for any actual damage.

In such case the measure of damages is a fair compensation for what has been suffered. If a customer's overcoat is ruined, its fair value. If a customer fell and broke a limb, his doctor's bill and other expenses, plus fair compensation for his pain and suffering and loss of earning power. Only rarely will the courts give what are termed punitive damages, that is, damages in excess of those actually suffered, which are given in order to punish the responsible author.

It can be adopted as a safe rule that it is always a wise policy to settle these damage cases where it can be done on a reasonable basis. Naturally there are cases where there is no vestige of legal liability, and where as a matter of principle the dealer feels that he must defend. In the average case, however, the legal question of liability is a mooted question which will cost money to litigate. In many such cases a settlement can be effected upon some such basis as paying the doctor's bill, or replacing a coat or other clothing, and it is almost always the cheaper and the wiser course to adjust the matter in that fashion.

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The following communication from the Bates Manufacturing Company, of Orange, N. J., is of interest to dealers:

"Through the injunction lately granted the Bates Manufacturing Company, of Orange, N. J., manufacturers of the Bates hand numbering machine, dealers and stationers may now be certain that the machines offered them as Bates hand numbering machines are as represented.

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"The court ruling in this case is definite in favor of the Bates Manufacturing Company and assures clear sailing in the future for the manufacturers as well as for the dealers handling the Bates hand numbering machine."

Want Stationery.

A report has been received from an American Consular officer in the Far East, in which he states that the local Government and certain missions are rapidly extending their educational systems to all parts of the kingdom, so that there is a demand for all classes of stationery and school supplies. As the English language is in general use, prices quoted, cost, insurance, and freight, in English terms, would serve the best purpose.

The desired information will be furnished to those who write to the Bureau of Manufactures, Washington, D. C., and mention "file No. 4,060."

1909 11 20 - The American Stationer p747 injunction .png

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NEXT ITEM

THE QUAKER CITY

Predict Biggest Holiday Season of a Decade—New Paper Company Starts—City Stationery Appropriations.

PHILADELPHIA, Nov. 23.—If all the city retailers had taken the advice some did which THE STATIONER gave some weeks ago, to place immediate orders for their lines, the shortage which is already in evidence would not have affected them. THE STATIONER advised them to follow the example of the country trade, which more than a month ago sent to the jobbers its holiday requirements and asked for immediate shipments. But in town, simply because the jobbers are so close at hand, many of the retailers fell into their old-time custom of forgetting about the holiday line until Thanksgiving Day has passed. And there is now evidence a-plenty that the jobbers' stocks will be exhausted long before the holiday trade normally is over.

Commenting upon the presence in the city today of the buyer for a large Southern jobbing house, who with taxicab made the rounds of both manufacturers and jobbers in this city in an effort to gather together additional holiday goods, principally toys, the head of one of the largest houses here said:

"This time a year ago I could have gone to New York and in an afternoon bought $5,000 worth of reorders where today I cannot get $50 worth. I refer of course to holiday toys, principally tin, but both of domestic and foreign manufacture. The importers take orders a season in advance and then the manufacturer starts. Of course there is always some excess stock made, but not a large amount. Last year this excess was a drug on the market; this year it is completely exhausted. Not for a half decade have we seen the importers so thoroughly cleaned out of goods as now."

Of course the shortage is particularly in Christmas goods, cheap tin toys leading; but still it is more than likely that even staple lines will be found unobtainable by belated buyers. For nothing short of a calamity can now prevent the biggest holiday season for a decade. There is a splendid market for every line of goods, staples and novelties. Money seems to be plentiful and the consumer seems to have no disposition to haggle over prices. Not for several years has there been such a demand for commercial engraving and printing as there is now. And school children who a year ago were glad to get a cheap pad now buy both pads and copybooks in variety.

The Department of Supplies, which is the purchasing agent for all the city offices, has just forwarded to Councils its estimate for 1910. The aggregate is $2,786,245, as against $1,458,430 originally appropriated for this year. There are many other items than stationery, printing, etc., in the schedules, but the department is still the purchaser of many hundreds of thousands dollars' worth of paper and ink and pencils and other staples.

Among the week's visitors was one of particular interest. Charles E. Dewey, who comes for the John A. Murphy Company to cover the territory so long traveled by his predecessor, C. A. Quimby. Others who called were John Selden of the National Blank Book Company, Oscar Magnus of Julius Pollack, Fred Kraemer of the American Hard Rubber Company, Henry F. Marquardt of the Essex Pad and Paper Company, and E. A. Ashley of the Japanese Tissue Mills.

The newly organized Whiting-Patterson Company is now receiving its envelope machines and is confident of being able to start production early next month. It will confine itself to staple commercial goods. Another newcomer in the field is the Franklin Paper Company, 630 Filbert street, which has been started by H. A. Jacobs, formerly of the Manufacturers' Paper Company, to sell wrapping paper and twine.

E. R. G.

The Chicago Loose Leaf and Binder Co., Chicago, has been incorporated for manufacturing and book binding; capital, $5,000. The incorporators are George H. Davis, James W. Taylor and Alexander H. Heyman, all of Chicago, Ill.

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Dealers are warned against selling, as BATES NUMBERING MACHINES, AUTOMATIC HAND NUMBERING MACHINES not manufactured by the BATES MANUFACTURING COMPANY, ORANGE, N. J.

THE UNITED STATES CIRCUIT COURT for the District of New Jersey, at a session held at Trenton, N. J., on October 2, 1909, issued a peremptory injunction restraining the defendant from any further use of the words BATES NUMBERING MACHINE COMPANY as its corporate name, and from using the expression BATES NUMBERING MACHINE in connection with the sales of any automatic hand numbering machines not of our make, or in connection with the offering or advertising for sale of such machines.

The injunction is sweeping in character. It insures protection to the public and to ourselves. Henceforth the public can be assured that automatic hand numbering machines offered for sale as BATES NUMBERING MACHINES or BATES AUTOMATIC NUMBERING MACHINES are the genuine product, to the perfection of which we have given many years of intelligent, patient effort. If our machine were not of high quality and efficiency, it would not be imitated—failures do not breed voluntary imitation. If the words BATES NUMBERING MACHINE did not signify the perfection of mechanical excellence in the eyes of the public—if they were not representative of honesty and merit, the infringement would never have resulted and it would never have been necessary to issue the injunction, of which the following is a copy:

THE PRESIDENT OF THE UNITED STATES OF AMERICA
TO
(L. S.) BATES NUMBERING MACHINE COMPANY, its officers, attorneys, agents, servants and employees, and each and every of them, GREETING:

WHEREAS, In a certain action brought in our United States Circuit Court for the District of New Jersey by the Bates Manufacturing Company as complainant against you, Bates Numbering Machine Company, as defendant, it was ordered that a preliminary injunction should issue against you, the said Bates Numbering Machine Company;

NOW, THEREFORE, We do strictly command and enjoin you, the said Bates Numbering Machine Company, your officers, attorneys, agents, servants and employees, and each and every of you, under the penalties that may fall on you in case of disobedience, that you forthwith and until the further order of this Court, desist from any further use of the words "Bates Numbering Machine Company" as your corporate name or as such corporate name any other words which sufficiently resemble the trade-name of the complainant's product, to wit: "Bates Numbering Machine," as to be likely to mislead or deceive the public into thinking or believing that the automatic hand-numbering machines put out by you are the product of the complainant, and from employing or using the expression "Bates Numbering Machine" in connection with the sales of any automatic hand-numbering machine not of the complainant's make, or in connection with the offering or advertising for sale thereof, and that you further desist from filling any orders or awards calling for a "Bates Numbering Machine" with a machine or machines of other make than that of the complainant or from seeking to induce prospective purchasers to change orders, proposals and awards calling for a "Bates Numbering Machine" so as to describe or specify a machine or machines of other make from that of the complainant, without at the same time clearly and unmistakably informing such purchaser that the machines made by you are not those made by the "Bates Manufacturing Company," and that such company and not you began to advertise and for many years exclusively advertised said machines by the trade-name, "Bates Numbering Machine."

WITNESS the Honorable Melville W. Fuller, Chief Justice of the United States, at the City of Trenton, this fifth day of October, in the year of our Lord one thousand nine hundred and nine.

H. D. OLIPHANT, *Clerk.*

DELOS HOLDEN, ESQ., *Solicitor for Complainant.*

We object to no competition that is fair. We do object to any concern trading upon our name and reputation and endeavoring to make the public believe that it is buying genuine Bates Numbering Machines when they are not made by us.

A Complete Copy of this decision will be mailed to any one on request.

BATES MANUFACTURING CO., ORANGE, N. J.

New York Office, 10 Fifth Avenue

1909 12 - The Inland Printer p0535 injunction .png

NEXT ITEM

Mr. and Mrs. William Henry Richardson

Announce the arrival of their little son

William Henry Richardson, Junior

on the

Evening of Wednesday, the tenth of October nineteen hundred and nine
One hundred and five Garfield Avenue

This is engraved on a card about 3½ x 2½ inches, a stork being embossed in upper left-hand corner.

CARDS OF THANKS.

The following "thanks" are engraved on a black bordered card, the size of the card and width of border being optional, the regulation correspondence card being usually selected, either oblong or square:

IV

Mrs. William Henry Richardson

desires to thank

for kind inquiries during her recent illness

Garfield Avenue
One hundred and five

The family of
Mrs. William Henry Richardson
gratefully acknowledges

kind expression of sympathy and condolence

One hundred and five Garfield Avenue

(Size of card as Diagram IV.)

They may read "Mr. and Mrs. William Henry Richardson and family," etc., or

Mrs. William Henry Richardson
gratefully acknowledges

kind expression of sympathy in her bereavement

One hundred and five Garfield Avenue

(Size of card as Diagram IV.)

Letter Openers Not Knives.

The board of United States general appraisers has sustained a protest filed by A. L. Silberstein regarding the classification of mother-of-pearl letter openers. Duty was levied under a provision for "pocket knives." The importer alleged that the letter openers should be assessed at either 35 per cent as being in chief value of motherof-pearl or at 45 per cent under the metal paragraph. General Appraiser Fischer, who writes the decision for the board, is sustaining the importer's contention finds that some of the openers are entitled to enter as mother-of-pearl, while the others are admitted at 45 per cent. as manufactures of metal not specifically provided for.

Breaks Typewriting Record.

H. Otis Blaisdell, of New York, who made a world's record on Nov. 26, for fifteen minutes' copying on a typewriter, made a new record Nov. 27, for an hour at St. Joseph, Mo., by writing 6,184 words, or an average of 103 words a minute. The previous record was made by Miss Rose L. Fritz, whose average was 95 words.

Charles T. Bainbridge's Sons.

Charles T. Bainbridge's Sons', Brooklyn, New York, have been incorporated for the purpose of manufacturing paper, wood pulp, etc., with a capital of $100,000. The incorporators are H. C. Bainbridge, R. W. Bainbridge, H. C. Bainbridge and P. M. Bainbridge.

1909 12 04 - The American Stationer p845 BatesMachineCo .png

NEXT ITEM

Geyer's Stationer.

THE AUTHORITATIVE WEEKLY
OF THE STATIONERY OFFICE SUPPLY AND KINDRED TRADES

Entered as second-class matter, April 4, 1907, at the Post Office at New York, N. Y., under the Act of Congress of March 3, 1879.

Vol. 54 Thursday, December 19, 1912. No. 1363

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The latter concern will be afforded opportunity next week to show cause why the receivership should not be made permanent. The Bates Manufacturing Company has its factory in West Orange.

The burden of a bill of complaint filed by Mr. Dyke in Chancery is that the Bates Numbering Machine Company transferred its business and assets to another corporation in order to evade the payment of two judgments—one for $17,620.19, inclusive of costs, obtained by the Bates Manufacturing Company as the outcome of an infringement suit, and the other for $2,158.75, including costs also, recovered in contempt proceedings. A fine of $2,000 had been imposed, of which $1,000 was to go to the United States and $1,000 to the company.

It was July 31, 1905, that the Bates Manufacturing Company filed a bill against the Bates Machine Company, afterward known as the Bates Numbering Machine Company, in the United States District Court for the District of New Jersey, charging infringement in that the defendant company used the name "Bates" in connection with hand-numbering machines, and "by putting them out in packages bearing labels simulating the labels" of the complainant company.

In September, 1908, the court perpetually enjoined the defendant company from the further simulation of the complainant company's labels, and directed an accounting before H. D. Oliphant as master. The latter eventually reported that there was due from the defendant to the com-

(Continued on page 9)

Annual Meeting of Chicago Stationers

EIGHT years ago, the Chicago Stationers' Association, then a lusty infant organization, called to its parent, Fletcher B. Gibbs, and asked him to assume the presidency of the body, and direct it in the way it should go. Many things can and do happen in eight years. Since that first meeting when Fletcher B. Gibbs was tendered the presidency of the organization he had fathered, he has successively honored and been honored by the Chicago Association in serving as its president. We who have come later within the ken of this trade have observed with some attention the result of monumental labors, the long hours of vigilance in guarding the association from the perils which beset every movement looking to the betterment of human environment; we have, indeed, come to an understanding what Mr. Gibbs, in his long years of service, has stood for in his tireless efforts in the strengthening of the local association structure, as well as in the wider horizon which comprehends the National organization. That his work has been productive of lasting value to both National and local associations, one has but to look at the type of men who have become members of stationers associations in every city in the country. In this one man then we may see the embodiment of a vast industry, a business which has had an awakening, as it were, from the very force of his individuality concentrated upon his business in its widest sense; from the intensive power of an organizing mind which embraced the humblest dealer with no less consideration than the greatest manufacturer. That is organization; that is achievement as the well informed among the stationery trade know, and its able sponsor is the retiring president of the Chicago Association—Fletcher B. Gibbs.

It was the election of officers, therefore, which transcended every other matter that came before the Chicago Association of Stationers Thursday evening, December 12, at their annual meeting in the East Room at the La Salle Hotel. Albert H. Childs, long and favorably known to the Chicago trade as a man of initiative and enterprise, a

1912 07 4 - 1913 01 2 - Geyers Stationer vol 54 p1101 BatesVBates .png

UNCLE LEW HOME AGAIN.

AFTER an absence of over two months, during which he has traveled about 14,000 miles visiting the principal cities in the South and West and on to the Pacific Coast, "Uncle Lew" Williamson of the Thaddeus Davids Co. is at his desk again looking as chipper as a vacationist home after the holidays.

Although an old knight of the road, this is Mr. Williamson's first long trip in five years, and it was made principally for the purpose of renewing old acquaintances, numbered by the score in all sections of the United States. While "on the road" Uncle Lew was undoubtedly one of the most popular visitors calling upon the stationery trade, and it goes without saying that he was heartily welcomed to the fold again. Everywhere he was met with a warm reception, and Mr. Williamson says that he can never forget the many courtesies extended to him throughout the trip which will be long cherished among the pleasantest memories of his life.

Leaving New York Sept. 30th, Mr. Williamson first traveled through the South, which is his old stamping ground. Among the States visited were Virginia, Georgia, Alabama, Louisiana, Tennessee, South Carolina and Texas, and notwithstanding his familiarity with these sections, Mr. Williamson says that it was amazing to see the wonderful progress made in this country during the past few years. Modern stores abound, and evidences of prosperity are seen on every hand. Mr. Williamson predicts a great future for the South and he says that the stationers there are already beginning to enjoy the benefits of constantly improving conditions.

Likewise in the West he found the spirit of progress everywhere. Great stationery establishments are to be seen now in all of the principal cities all the way to the coast. Some of these stores, he says, are magnificent in the extreme and are excelled by no other section of the country. The Western merchant has proven himself to be a live-wire and his methods of doing business is up to the minute in every way. He thinks and acts quickly and is always ready to entertain a good proposition.

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The complainant company is prosecuting a cross-appeal from the decree, because relief was denied in respect to the use of the name "Bates" by the defendant company.

The defendant company owned a factory plant at 696-710 Jamaica avenue, Brooklyn, worth, with machinery and stock, in excess of $50,000.

During the taking of the accounting before the master, and subsequent to the contempt proceeding, the bill avers, the company fraudulently transferred the factory and substantially all its assets to the Roberts Numbering Machine Company, a New York corporation, formed April 23, 1910.

The bill charges that the Roberts company was organized by those in the defendant company with the intent to fraudulently acquire the assets and property of the defendant.

The bill makes mention, also, of the fact that the defendant company has not paid its State franchise tax for the years 1910 and 1911, and is on that account liable to be proclaimed by the Governor in January, when the tax for 1912 will also be in default.

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